TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 464.

GEORGIA RAILWAY & POWER COMPANY, GEORGIA RAILWAY & ELECTRIC COMPANY, J. D. MALSBY, ET AL., PLAINTIFFS IN ERROR,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

FILED JULY 5, 1912.

(29,014)

(29,014)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 464.

GEORGIA RAILWAY & POWER COMPANY, GEORGIA RAILWAY & ELECTRIC COMPANY, J. D. MALSBY, ET AL., PLAINTIFFS IN ERROR,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation and service	3	2
Petition for writ of error	5	3
Order allowing writ of error	7	4
Assignments of error	8	5
Bond on writ of error	16	10
Praecipe for record	20	12
Opinion, Wright, J	22	13
Opinion, Wright, J	29	18
Judgments	36	22
Proceedings in superior court of Fulton County	38	24
Bill of exceptions	38	24
Order on demurrer, &c	40	25
Order on demurrer to intervention of Malsby *et al*	40	25
Testimony of S. A. Johnson	43	27
Letter, Arkwright to mayor, April 23, 1909	50	31
Offers of evidence, &c	51	32

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 4, 1922.

	Original.	Pr
Requests to charge jury	52	
Verdict	54	
Judgment	54	
Plaintiffs' exceptions	55	
Specifications of error	68	
Judge's certificate to bill of exceptions	70	
Service of bill of exceptions	70	
Clerk's certificate to bill of exceptions	71	
Petition	72	
Exhibit A—Grant of Town of College Park to lay track, &c	83	
B—Ordinance of November 6, 1905	86	
C—General Order No. 14	88	
D—Order of Railroad Commission	90	
E—Notice by power companies to mayor *et al*	91	
Amended petition	92	
Exhibit J—Record before Fulton superior court in case of Georgia Railway and Power Co. *vs.* Railroad Commission of Georgia *et al.*, No. 40900	93	
Petition	93	
Exhibits A to P—Ordinances, records, and acts, &c	116	
Order denying mandamus	184	
Demurrer to petition	184	
Answer	186	
Bill of exceptions	188	
Judge's certificate	189	
Judgment of supreme court	190	
Judgment on remittitur	191	
Answer and cross-bill	192	
Exhibit A—Order of Commission	225	
Exhibit B—Resolution, February 5, 1917	226	
Amended petition	227	
Exhibits F to I, inclusive—Rules of Railroad Commission	229	
Opinion and order of Railroad Commission, file No. 13946, *In re* Application for Increased Fares, &c., August 14, 1918	231	
Demurrer to answer and cross-bill	272	
Amended answer	276	
Demurrer and motion to strike out	285	
Order on demurrer and motion to strike out	289	
Verdict	290	
Decree	290	
Clerk's certificate	291	
Clerk's certificate	292	

a Supreme Court of Georgia.

GEORGIA RAILWAY & POWER CO. et al., Plaintiffs in Error,

vs.

MAYOR, ETC., of COLLEGE PARK, Defendants in Error.

1 UNITED STATES OF AMERICA, *ss:*

[Seal of the U. S. District Court, N. D. Georgia.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Georgia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Georgia before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Georgia Railway & Power Company, Georgia Railway & Electric Company, J. D. Malsby, J. R. Hardin, F. MacDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis and C. Roessler, Plaintiffs in Error, and The Mayor and Council of the City of College Park, Defendants in Error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repug-
2 nant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; a manifest error hath happened to the great damage of the said Georgia Railway & Power Company, Georgia Railway & Electric Company, J. D. Malsby, J. R. Hardin, F. MacDonld, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis, and C. Roessler, as by their complaint appears. We being will that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within — days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that

error what of right, and according to the laws and customs of th United States, should be done.

Witness the Honorable Wm. H. Taft, Chief Justice of the Unite States, the 30 day of May, in the year of our Lord one thousand nin hundred and twenty two.

O. C. FULLER,
Clerk of the District Court of the United States for the Northern District of Georgia.

Allowed by
M. W. BECK,
Associate Justice of the Supreme Court of Georgia, Presiding, the Chief Justice Being Disqualified.

Filed in office May 30, 1922.
Z. D. HARRISON,
Clk. Supreme Court of Ga.

[Endorsed:] Supreme Court of the United States, October Ter 191-. Georgia Railway & Power Co. et al., Pl'ffs in Error, vs. May & Council of the City of College Park, Def'ts in Error. Writ Error.

3 UNITED STATES OF AMERICA, *ss:*

To the Mayor and Council of the City of College Park, Greeting:

You are hereby cited and admonished to be and appear at the Su preme Court of the United States, at Washington, in the District Columbia, within thirty days from the date of service of this Cita tion, pursuant to a writ of error filed in the Clerk's Office of the Su preme Court of Georgia, wherein Georgia Railway & Power Compan Georgia Railway & Electric Company, J. D. Malsby, J. R Hardin, F MacDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phi lips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowe H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield M. E. Hawn, David Hawn, P. E. Davis and C. Roessler, are plain tiffs in error, and you are defendants in error, to show cause, if an there be, why the judgment rendered against the said plaintiffs i error, as in said writ of error mentioned, ought not to be correcte and why speedy justice ought not to be done to the parties in that be half.

Witness the hand and seal of the Honorable Chief Justice of th Supreme Court of Georgia, this 30 day of May, 1922.

M. W. BECK, [SEAL]
Presiding Justice Supreme Court of Georgia, Chief Justice Fish Disqualified.

Attest:
Z. D. HARRISON,
Clerk Supreme Court of Georgia.

4 Due and legal service of the foregoing citation and copy thereof is hereby waived; and all other and further service required by law is likewise waived. This May 30, 1922.

GEO. P WHITMAN,
Attys. for the Mayor and Council of the City of College Park.

Filed in Office May 30, 1922.
Z. D. HARRISON,
Clerk Supreme Court of Georgia.

5 In the Supreme Court of the State of Georgia.

No. —.

GEORGIA RAILWAY & POWER CO., GEORGIA RAILWAY & ELECTRIC Co., and J. D. Malsby, J. R. Hardin, F. MacDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis, and C. Roeasler, Plaintiffs in Error,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK.

From Fulton Superior Court.

To the Honorable William H. Fish, Chief Justice of the Supreme Court of Georgia:

Now come Georgia Railway & Power Company, Georgia Railway & Electric Company, J. D. Malsby, J. R. Hardin, F. MacDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis and C. Roessler, by their attorneys, and complain and allege:

1.

That on or about the 29th day of April, 1922, the Supreme Court of the State of Georgia made and entered a final order and judgment herein in favor of The Mayor and Council of the City of College Park and against Georgia Railway & Power Company, Georgia Railway & Electric Company, J. D. Malsby, J. R. Hardin, F. MacDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley,

B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Benne
6 W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Fiel
R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn,
E. Davis and C. Roessler, in which final order and the proceedin
had thereunder in this case, certain errors were committed to t
prejudice of Georgia Railway & Power Company, Georgia Railwa
Electric Company, J. D. Malsby, J. R. Hardin, F. MacDonald, J
C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glen
P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J.
Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Will
T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M.
Hawn, David Hawn, P. E. Davis, and C. Roessler, all of which w
more in detail appear from the assignment of errors which is fil
with this petition.

2.

That the Supreme Court of the State of Georgia is the highe
court of the said State of Georgia in which a decision in this s
and this matter could be had.

Wherefore, Georgia Railway & Power Company, Georgia Railw
& Electric Company, J. D. Malsby, J. R. Hardin, F. MacDona
Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J.
Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simps
J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H.
Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfi
M. E. Hawn, David Hawn, P. E. Davis and C. Roessler, petition
pray that writ of error from the Supreme Court of the State
Georgia may issue in its behalf to the Supreme Court of the Uni
States for the correction of errors so complained of, and that a tru
script of the record, proceedings and papers in this case, duly
thenticated, may be sent to the Supreme Court of the United St

COLQUITT & CONYERS,
J. PRINCE WEBSTER,
ROSSER, SLATON & HOPKINS,
Attorneys for Petitioners, Plaintiffs in Erro

7 The writ of error as prayed for in the foregoing peti
is hereby allowed, this May 30, 1922.

The writ of error to operate as a supersedeas and the bond for t
purpose is fixed at the sum of $250.00.

Dated, Atlanta, Georgia, this 30 day of May, 1922.

M. W. BECK,
Presiding Justice Supreme Court of Georgia,
The Chief Justice Being Disqualified.

Filed in office May 30, 1922.
Z. D. HARRISON,
Clerk Supreme Court of Georgia.

In the Supreme Court of the State of Georgia.

No. —.

GEORGIA RAILWAY & POWER CO., GEORGIA RAILWAY & ELECTRIC Co., and J. D. Malsby, J. R. Hardin, F. McDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis, and C. Roessler, Plaintiffs in Error,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, Defendants in Error.

From Fulton Superior Court.

Now comes Georgia Railway and Power Company and Georgia Railway & Electric Company, and J. D. Malsby, J. R. Hardin, F. MacDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis and C. Roessler, and respectfully submit that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Georgia in the above entitled matter, there is manifest error, to-wit:

1. Under the undisputed facts in the case, forced compliance with the ordinance of the Mayor and Council of the City of College Park of November 6, 1905, to-wit:

"That no greater fare than that of five cents for each passenger be charged for passage from the southern limits of the City of College Park to some central point in the City of Atlanta"

confiscates the property of the Georgia Railway & Electric Company and the Georgia Railway & Power Company.

(*a*) The Court erred in not holding said provision unconstitutional as violative of the Fourteenth Amendment to the Constitution of the United States.

(*b*) The Court erred in holding that said provision constituted a contract between the Mayor and Council of the City of College Park and the Georgia Railway & Electric Company and the Georgia Railway & Power Company, because: (1) Neither of said parties had any right, power or authority to make binding contracts as to fares; (2) said parties are prohibited from making contracts for fixed fares, irrevocable and unlimited as to time, by the Constitution of the State

of Georgia, set out in Sections 6389, 6464, 6467 and 6563, of the Code of 1914 of said State.

(*c*) Said Court erred in not holding that if said provision was ever a contract: (1) It had ended prior to the pending suit: (*a*) By complete performance; (*b*) by adequate notice of its termination; (*c*) by the action of the State of Georgia, through the Commission, by which further forced compliance with said five-cents fare rate provision was rendered discriminatory and, therefore, illegal and confiscatory; (*d*) by the action of the State of Georgia, through orders of the Railroad Commission, requiring the giving of transfers on payment of said five-cents fare (thus entitling College Park passengers to ride over the entire street railway system for five cents, while other passengers, on the same line and for less identical character of service, are required to pay seven cents), and by orders of said body increasing the quality of service over and above that provided for in the claimed contract; (*e*) by the legislative acts of the State of Georgia (Georgia Acts 1906, page 650) extending the territorial extent of the said five-cents fare provision by extending the corporate limits of the City of College Park.

The State Court held that all of said orders and acts of the State were and are legal, valid and binding, and forced compliance
10 therewith. This said construction by the Court of the ordinance of November 6, 1905, together with the forced compliance by said railway companies with said orders and acts of the State aforesaid, render the rate provision of said ordinance invalid and violative of the Fourteenth Amendment of the Constitution of the United States, in that it confiscates the property of plaintiffs in error and denies to them the equal protection of the law guaranteed therein.

2. Under the undisputed facts in the case, forced compliance with said ordinance of November 6, 1905, to-wit:

"That no greater fare than that of five cents for each passenger be charged for passage from the southern limits of said City of College Park to some central point in the City of Atlanta,"

violates the Fourteenth Amendment to the Constitution of the United States as to the individual intervenors in said case, in that it denies to them and all other citizens and patrons, than those leaving or boarding the cars of the street railway companies in the City of College Park, the equal protection of the law as therein guaranteed for that said provision of said ordinance, and the action of the State of Georgia by and through the Railroad Commission of said State, and construction placed upon same by the State court, requires the individual intervenors and all other citizens, persons and patrons (except College Park patrons) to pay seven cents for the same or less service, while College Park patrons, for a similar or greater service, are charged only five cents.

3. Because the legislative act of the State of Georgia (Acts of 1907, page 73 et seq.), as construed and enforced by the State Court,

ıd amended by the Act of August 18, 1919 (Georgia Laws 1919, ıge 94).

(*a*) Renders said act unconstitutional and violative of the
1 Fourteenth Amendment to the Constitution of the United States; in that it denies the plaintiffs in error, individually ıd collectively, the equal protection of the law and fixes a dis-ıiminatory and illegal scheme of rates, in that said act places under ıe jurisdiction of the Railroad Commission of Georgia the right, ɔwer and authority to change rates of fare fixed in all contracts ɪcept valid, subsisting contracts in existence on August 23, 1907, ɛtween any municipality and any street railway company having its ɪincipal office and operating lines of railroad in counties having a ɔpulation of less than 75,000 and more than 125,000. There is ɔ legal or reasonable classification with reference to the contracts ɪcepted and those placed under said Commission's jurisdiction; and ı a result of said discriminatory exception, the individual plain-ffs in error and all other patrons of the street railway companies, ɪcept those boarding or alighting from cars in College Park, are ɐquired to pay seven cents fare, while those boarding or alighting ɔm cars in College Park pay only a five cents fare.

(*b*) Said act of 1907, (Georgia Acts 1907, page 73 et seq.), as ɔnstrued and enforced by the Court, violates the Fourteenth Amend-ıent to the Constitution of the United States, in that the court ɔlds that the said act withholds from the Railroad Commission of ɐorgia the right, power or authority to change the five-cents fare ɾovision of said ordinance of November 6th, 1905 (as set out in ssignment of error No. 1), but holds that said Act confers jurisdic-on upon said Commission to increase the quality and quantity of ɛrvice rendered, and empowers the said Commission to require the ssuing of transfers upon payment of the fare provided for in said ɾdinance; and said act thus construed and enforced, confiscates the ɾoperty of the Georgia Railway & Electric Company and the Georgia
2 Railway & Power Company without due process of law, and denies them the equal protection of the law, in contravention of the Fourteenth Amendment to the Constitution of the ʃnited States.

(*c*) Said Act of 1907 (Acts 1907, page 73 et seq.), as construed ıd enforced by the court against the individual intervenors, plain-ffs in error, fixes an illegal and discriminatory scheme of rates, in ɔlation of the Fourteenth Amendment to the Constitution of the ʃnited States, in that the court holds that under and by virtue of ıid act, power and authority are conferred upon the Railroad Com-ıission of Georgia to fix a seven-cents rate of fare for less or similar ɛrvice rendered to the individual intervenors and other persons ıd patrons similarly situated, while it maintains and keeps in force five-cents rate of fare for a greater or similar service rendered ɔllege Park patrons by the same street railway companies operating ıe same system and over the same lines.

4. The court having held that the provisions of the ordinance of November 6, 1905, of the Mayor and Council of the City of College Park, to-wit:

"That no greater fare than that of five cents for each passenger be charged for passage from the southern limits of said city of College Park to some central point in the city of Atlanta,"

is a binding contract between the Mayor and Council of the City of College Park and the Georgia Railway & Electric Company and the Georgia Railway & Power Company, the Court erred in not holding that the legislative act of the State of Georgia, of 1907 (Acts 1907, page 73 et seq.), as construed by the court, violates Article 1, Section 10 of the Constitution of the United States, in that said Act as thus construed impairs the obligation of the said contract by increasing its burdens; in that the court held that under the Act of 1907

13 the State Railroad Commission had the jurisdiction and power: (*a*) to require, and did require, the issuance of transfers on payment of the five-cents contract fare, thereby entitling passengers to ride, not only to some central point in the City of Atlanta, but over the entire railway system in Atlanta and vicinity and (*b*) to increase the quality and quantity of service rendered for said five-cents fare. The Court erred in not holding that said acts and the orders of the Railroad Commission issued thereunder were unconstitutional and in violation of Article 1, Section 10, of the Constitution of the United States, in that they impair the obligation of the contract upheld by the Court.

5. Under the provisions of the ordinance of the Mayor and Council of the City of College Park of November 6, 1905, to-wit:

"No greater fare than that of five cents for each passenger be charged for passage from the southern limits of said City of College Park to some central point in the City of Atlanta,"

held by the court to be a contract, a five-cents rate of fare is provided for only "from the southern limits of said City of College Park to some central point in the City of Atlanta." The Court held that the legislative acts of the State of Georgia (Acts 1907, page 73 et seq.), and the orders of the Commission under and by virtue of the said act, made said five-cents fare provision operative from other points in the City of College Park to other points in the City of Atlanta, and from Atlanta to College Park. Such construction placed upon said acts and orders impairs the obligations of said contract in violation of Article 1, Section 10 of the Constitution of the United States, in that it places increased burdens upon plaintiffs in error not provided for and set out in said contract, and the Court erred in not holding said acts and orders unconstitutional.

14 6. Because the court, having held that the fare provision of the Ordinance of November 6, 1905, as set out in assignment of error No. 1, constituted a contract, erred in not holding that the act of the General Assembly of the State of Georgia (Acts 190

page 650) violates Article 1, Section 10, of the Constitution of the United States:

(*a*) In that it impairs the obligations of said contract, for that said act, as construed by the court, extended the five-cents provision of said contract to territory added to the City of College Park after the execution of said contract and extended its provisions to territory not included therein at the time the contract was executed.

(*b*) Because the undisputed facts showed that the County of Fulton entered into a contract with the Georgia Railway & Electric Company and the Georgia Railway & Power Company, under and by virtue of which contract the tracks of said street railway companies were placed in the public roads of the County of Fulton, between the City of Atlanta and the City of College Park, and by said contract fares to be charged passengers boarding the cars therein were not limited to five cents. The construction placed by the court upon said legislative act of 1906 required the street railway company to charge only five-cents fares to passengers boarding and alighting from the cars within said territory, and said act, thus construed, impairs the obligations of said contract, adding additional burdens thereto, and the Court erred in not holding said act unconstitutional, in violation of Article 1, Section 10, of the Constitution of the United States; for that under said act and said construction there is imposed a five-cents fare for passengers boarding and alighting from cars in said former County territory.

7. The ordinance of November 6, 1905, as set out in assignment of error No. 1, and as construed by the Court makes said ordinance violative of the Fourteenth Amendment to the Constitution of the United States, for that it denies to plaintiffs in error the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States, for that the five-cents fare provision therein contained is, by the undisputed facts, confiscatory; and to compel the Georgia Railway & Electric Company and the Georgia Railway & Power Company to continue to operate under and by virtue of the same, and denying them the right to terminate all its lines under and by virtue of said contract and to cease to operate its street railway lines within the city of College Park, and to compel said street railway companies to permanently devote their property to a public use, without any compensation therefor, and to compel them to continue public service in said territory, without reference to the value of the service rendered, thus confiscates the property of said companies.

COLQUITT AND CONYERS,
J. PRINCE WEBSTER,
ROSSER, SLATON & HOPKINS,
Attys. for Plaintiffs in Error.

Filed in office: This May 30, 1922.
Z. D. HARRISON,
Clk. Supreme Ct. of Ga.

16 In the Supreme Court of the State of Georgia.

No. —.

GEORGIA RAILWAY & POWER CO., GEORGIA RAILWAY & ELECTRIC Co., J. D. Malsby, J. R. Hardin, F. MacDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, and C. Roessler, Plaintiffs in Error.

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, Defendants in Error.

From Fulton Superior Court.

Know all men by these presents, That we, Georgia Railway & Power Company, Georgia Railway & Electric Company, J. D. Malsby, J. R. Hardin, F. MacDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis and C. Roessler, as Principal, and National Surety Co., of New York, N. Y., as Security, are held and firmly bound unto the Mayor and Council of the City of College Park in the sum of two hundred and fifty Dollars ($250.00), to be paid to said obligee; the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 30 day of May, 1922.

Whereas, the above named Georgia Railway & Power Company, Georgia Railway & Electric Company, J. D. Malsby, J. R. Hardin, F. MacDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W.
17 Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis and C. Roessler, have prosecuted a writ of error in the Supreme Court of the United States to review the judgment rendered in the above entitled action by the Supreme Court of Georgia;

Now therefore, the condition of this obligation is such that if the above named Georgia Railway & Power Company, Georgia Railway & Electric Co., J. D. Malsby, J. R. Hardin, F. MacDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F.

Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis and C. Roessler, shall prosecute their said writ of error to effect and answer all costs and damages if they fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

GEORGIA RAILWAY & POWER COMPANY,
By G. W. BRINE, [SEAL.]
Its Vice President.
GEORGIA RAILWAY & ELECTRIC COMPANY,
By THOS. K. GLENN, [SEAL.]
Its President.
J. D. MALSBY, [SEAL.]
J. R. HARDIN, [SEAL.]
F. MacDONALD, JR., [SEAL.]
C. M. BINDER, [SEAL.]
J. C. GORMAN, [SEAL.]
A. L. CURTIS, [SEAL.]
J. E. PHILLIPS, [SEAL.]
J. H. GLENN, [SEAL.]
P. L. PROVANO, [SEAL.]
18 H. L. GLOER, [SEAL.]
F. W. HADLEY, [SEAL.]
B. T. SIMPSON, [SEAL.]
J. L. MURPHY, [SEAL.]
D. N. BALDWIN, [SEAL.]
C. E. BENNETT, [SEAL.]
W. E. FLOWERS, [SEAL.]
H. L. WILLIS, [SEAL.]
T. F. JOHNSON, [SEAL.]
W. E. FIELD, [SEAL.]
R. L. WALKER, [SEAL.]
C. C. BARFIELD, [SEAL.]
H. E. HAWN, [SEAL.]
P. E. DAVIS, [SEAL.]
C. ROESSLER, [SEAL.]
Principal.
By WALTER T. COLQUITT,
Atty. at Law & in Fact.
NATIONAL SURETY COMPANY,
Surety,
By HAROLD BLOODWORTH, [SEAL.]
Resident Vice President.

Attest:
EUNICE ELDER, [SEAL.]
Resident Asst. Secretary.

Signed, sealed and delivered in presence of:
—— ——.
—— ——.

GEORGIA,
Fulton County:

On this the 30 day of May, 1922, personally appeared G. W Brine, an officer of Georgia Railway & Power Company and T. K Glenn, an officer of Georgia Railway & Electric Company, and who executed on behalf of said Companies the foregoing bond, and acknowledged that they executed same with full authority.

G. W. BRINE.
THOS. K. GLENN.

19 [SEAL.] HUGH W. DOBBS,
Notary Public.

Notary Public at Large, Georgia.

My Commission Expires Sept. 9th, 1925.

I hereby approve the foregoing bond and surety, this 30 day of May, 1922.

M. W. BECK,
Presiding Justice Supreme Court of Georgia,
The Chief Justice Being Disqualified.

Filed in office May 30, 1922.
Z. D. HARRISON,
Clerk Supreme Court of Georgia.

20 In the Supreme Court of the State of Georgia.

No. —.

GEORGIA RAILWAY & POWER CO., GEORGIA RAILWAY & ELECTRIC Co., and J. D. Malsby, J. R. Hardin, F. McDonald, Jr., C. E. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis, and C. Roessler, Plaintiffs in Error,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, Defendants in Error.

From Fulton Superior Court.

The Clerk of the Supreme Court is hereby directed to prepare and certify a transcript of the record in the above entitled cause, for the of the Supreme Court of the United States, by including therein the following:

1. Bill of Exceptions, and Record from the Superior Court of Fulton County to the Supreme Court of Georgia, including the Brief of Evidence.

2. Opinion and Judgment of the Supreme Court of Georgia in this case, both on interlocutory injunction and final decree.

3. Petition and writ of error.

4. Allowance of the Writ.

5. Assignments of Error.

6. Supersedeas Bond.

7. Citation, with Acknowledgment of Service.

8. The Writ of Error.

9. This Præcipe and Acknowledgment of Service.

COLQUITT & CONYERS,
J. PRINCE WEBSTER,
ROSSER, SLATON & HOPKINS,
Attys. for Plffs. in Error.

21 Due and legal service of the above and foregoing Præcipe, copy and service thereof, and all other and further service required by law, hereby waived.
This May 30, 1922.

GEO. P. WHITMAN,
Attys. for Defendants in Error,
Mayor and Council of the City of College Park.

Filed in Office, May 30, 1922.
Z. D. HARRISON,
Clerk Supreme Court of Georgia.

22 Supreme Court.

Nos. 2359 and 2334.

GEORGIA RAILWAY AND POWER COMPANY et al.

v.

TOWN OF DECATUR.

GEORGIA RAILWAY AND POWER COMPANY et al.

v.

MAYOR AND COUNCIL OF COLLEGE PARK.

By the COURT:

Upon request of counsel for plaintiff in error the decision of this court in the case of Georgia Railway & Power Co. v. Railroad Com-

mission of Georgia, 149 Ga. 1 (98 S. E. 696, 5 A, L. R. 1), has be reviewed; and after consideration of the ruling there made, it appea that the requisite number of the Judges now presiding are not i favor of reversing the decision so reviewed, and therefore the ruli there made stands unchanged. This ruling controls adversely to th plaintiff in error the issues presented here. But the court is furth of the opinion, that, independently of the ruling made in the ca referred to, the Georgia Railway and Power Company was witho authority to fix the rate which the plaintiffs in the court below soug to have enjoined, and that consequently the court did not err i granting the interlocutory injunction.

WRIGHT, *Judge:*

The differences arising between the parties in the case under co sideration are based more upon legal contentions than upon disput facts.

On April 1, 1903, the Georgia Railway and Electric Compan through its legally constituted officials, signed an agreement ratif ing the terms of an ordinance passed by the Town of Decatur o March 3, 1903, which ordinance provided, among other things, tha

the street-railway company was "to never charge more tha
23 five cents for one fare upon its main Decatur line, referr to as the Rapid Transit Line, for one passenger and one tr upon its regular cars from the terminus of said line in the City Atlanta to the terminus of same in the Town of Decatur, or from th terminus of same in the Town of Decatur to the terminus of th same in the City of Atlanta." This written agreement came abo as the result of compromise between the parties, growing out litigation, through which the Town of Decatur sought to enjoin th Georgia Railway and Electric Company from tearing up and remo ing the line of the Atlanta Railroad Company in the Town Decatur. The written agreement embodied the consent of th municipality to the removal and discontinuance of the line of th Atlanta Railroad Company, with the stipulation as to fare ju quoted. Under this written agreement both parties acted witho differences until some time in the year 1918, when the Georgia Ra way and Power Company (the lessee of the Georgia Railway an Electric Company) petitioned the Railroad Commission to grant a increase of fare over their main Decatur line. This application w rejected by the Railroad Commission, which held that it was wit out jurisdiction to grant the increase of fare, under the proviso the act of August 23, 1907, which prohibited them from interferi with existing rates where there was a valid, subsisting contract. O August 23, 1918, the Georgia Railway and Power Company sought mandamus to compel the Railroad Commission to take jurisdictio and to act upon the application for an increased rate over the electr line in question. This application was based upon an attack on th validity of the contract between the Town of Decatur and th Georgia Railway and Electric Company. This court upheld th judgment of the lower court denying the mandamus absolute, whic

was an adjudication that the Railroad Commission was without jurisdiction because of a valid, subsisting contract between
24 the parties, to wit, the contract of April 1, 1903. On October 5, 1920, the Georgia Railway and Power Company and the Georgia Railway and Electric Company notified the Town of Decatur that on or after October 20, 1920, the fare on the main or north Decatur line would be seven cents, and that they denied the legality and validity of the so-called contract provision limiting the fare to five cents (set out in the ordinance of the Town of Decatur, March 3, 1903, and an agreement of April 1, 1903, signed by the Town of Decatur and the Georgia Railway and Electric Company). Just prior to the threatened raise in rates the Town of Decatur brought the case now under review, denying the right of the power company and the electric company thus to abrogate the contract of April 1, 1903, setting forth in their petition in detail the facts above stated. The defendant companies in their answer and cross-bill denied the validity of the contract of April 1, 1903, upon numerous grounds, and prayed that it be declared null and void, and that all parties be enjoined and restrained from interfering with it in fixing the rate of seven cents or any other just and non-discriminatory rate upon the Decatur line. After granting a temporary restraining order, the judge of the superior court, on December 4, 1920, continued the same of force, and granted the injunction as prayed in favor of plaintiffs and against the defendants. It is to this ruling of the court that exception is taken.

We are of the opinion that the presiding judge was right in granting the injunction as prayed. Under our law the rate of fare upon this and every electric railway company within the State must be fixed by the Railroad Commission, unless there is a valid, subsisting contract made prior to the act of August 23, 1907. The right to fix rates on electric-railway companies' lines is contained in the amendatory act of August 23, 1907 (Acts 1907, p. 72), which carries into effect the provision of the constitution, art. 4, sec. 2, par. 1.
25 Under the act of August 23, 1907, it is provided: "The powers and duties heretofore conferred by law upon the Railroad Commission is hereby extended and enlarged, so that its authority and control shall extend to street railroads and street-railroad corporations, companies or persons owning, leasing, or operating street railroads in this State; provided, however, that nothing herein shall be construed to impair any valid, subsisting contract now in existence between any municipality and any such company." The effect of the constitutional provision and the legislative enactments carrying it into effect was clearly to cover the entire scheme of rate fixing. If there existed, on August 23, 1907, a valid, subsisting contract which fixed the rate, it was conclusive, and neither the Railroad Commission nor either party to the contract can change or alter it. If there was a void contract for any of the numerous reasons urged by plaintiffs in error, then it was not a valid, subsisting contract, and the Railroad Commission only could and should fix a change in the rate. In the instant case the power company is assuming to do what the Railroad Commission refused to do, and what this court

has held they were right in not doing, to wit, declare the contract
April 1, 1903, void. Not only this, but the plaintiffs in error a
asking this court to now declare the contract void and enjoin
parties from interfering with the power company in fixing a fa
of seven cents, or any other just, reasonable, and non-discriminato
rate over the line in question. If this is a void contract, the Ra
road Commission alone has the right to change the fare; if it is
valid, subsisting contract, the power company is bound by it. Plain
tiffs in error are met at the very threshold with the question of the
right to declare void this contract of 1903; but, should we grant
them the right to do so, they are met with what appears to be
unanswerable objection, that the power company h
26 no right to alter, change, or fix a rate differing from t
existing rate under which it has been operating their line
railroad since 1903. This power is reserved alone by the constit
tion to the State, and by legislative enactment is placed in the hand
of the Railroad Commission.

Here it is insisted that where the governmental authority fails
exercise its power to control, and where no contract exists, the com
pany has the right to fix its own fares, provided they are just, reaso
able, and non-discriminatory. Granting this to be true, it is pla
that such condition does not exist. The State of Georgia, in t
amendatory act of 1907 referred to, clearly exercised this authori
to regulate; and it is no answer to say that an appeal has alrea
been made to the Railroad Commission, and that it has refused f
want of jurisdiction. The Railroad Commission disclaimed juri
diction, not because they were without power to fix rates for electri
railroad companies, but because in the case they had under revie
they were deprived of that right by the existence of a valid, su
sisting contract. Whatever conclusion might be reached as to t
validity of the contract of April 1, 1903, it would not affect the co
clusion that the power company is without authority to change
fix rates on its electric lines, and this is exactly what it attempts
do, and what the trial court has enjoined it from doing in the i
stant case.

But the ruling of this court in the case of Georgia Railway a
Power Co. v. Railroad Commission, 149 Ga. 1 (98 S. E. 696 5 A.
R. 1), if unreversed, is conclusive on the issue involved in the i
stant case. In that case Justice Beck rendering the decision sai
"Under the provisions contained in the fifth section of t
27 act approved August 23, 1907, embodied in the Civil Co
§2662, the railroad commission of this State is without a
thority to exercise the power conferred and extended by that act.
as to determine or fix fares upon lines of street railroads within t
limits of any town or city between which and the street-railroad co
pany operating such lines there was a valid, subsisting contract
the time of the passing of the act. There was such a contract b
tween the City of College Park and the Georgia Railway and Pow
Company, and between that company and the Town of Decat
as to one line running from Decatur to Atlanta. These contra
were in existence on the 23d day of August, 1907, and are still su

sisting contracts. As we decided in the first part of this opinion, these contracts are not invalid, but are valid and subsisting contracts, and were valid and subsisting contracts on the 23d day of August 1907." This decision clearly settles the question that at the time of the execution of this contract both the Georgia Railway and Electric Company and the Town of Decatur had authority to execute the contract of April 1, 1903.

Mr. Justice White, in the case of Southern Iowa Electric Co. v. City of Chariton, 41 Sup. Ct. 400 (255 U. S. —, 65 L. ed. —), held: "Where, however, the public-service corporations and the governmental agencies dealing with them have power to contract as to rates, and exert that power by fixing by contract rates to govern during a particular time, the enforcement of such rates is controlled by the obligation resulting from the contract, and therefore the question of whether such rates are confiscatory becomes immaterial;" citing Freeport Water Company v. Freeport, 180 U. S. 587, 593 (45 L. ed 679, 686, 21 Sup. Ct. 493); Detroit v. Detroit City R. Co. 184 U. S. 368 (46 L. ed. 592, 22 Sup. Ct. 410); Knoxville Water Co. v. Knoxville, 189 U. S. 434, 437 (47 L. ed. 887, 23 Sup. Ct. 531); Cleveland v. Cleveland City R. Co., 194 U. S. 519 (48 L. ed. 1103, 24 Sup. Ct. 756); Home Tel. & Tel. Co. v. Los Angeles, 211 U. S. 265, 273 (53 L. ed. 176, 182, 29 Sup. Ct. 50); Minneapolis v. Minneapolis Street R. Co. 215 U. S. 417 (54 L. ed. 259, 30 Sup. Ct. 118); Columbus R. &c. Co. v. Columbus, 249 U. S. 399 (63 L. ed. 669, 6 A. L. R. 1648, P. U. R. 1919D, 239, 39 Sup. Ct. 349).

We have been asked to review and reverse the decision in the case of Georgia Railway and Power Company v. Railroad Commission of Georgia, supra; but, upon review the requisite number of the Judges now presiding are not in favor of reversing the decision so reviewed, and therefore the ruling there made stands unchanged. And the court is further of the opinion, that, independently of this ruling as to the case which we are asked to review, the George Railway and Power Company was without authority to fix the rate which the plaintiffs in the court below sought to enjoin; and consequently the court did not err in granting the interlocutory injunction.

What is said as to the case of Georgia Railway and Power Company v. Town of Decatur is also controlling in the case of the Georgia Railway and Power Company v. College Park.

Judgments affirmed. All the Justices concur.

Gilbert and George, JJ., concur in the judgment affirming the grant of the interlocutory injunction, and specially as to the ruling that the contracts between the municipalities and the street-railway company as to fares are valid, because bound by the decision in Georgia Railway and Power Company v. Railroad Commission of Georgia, supra.

29 No-. 3019 and 3081.

GEORGIA RAILWAY and POWER COMPANY et al.

v.

TOWN OF DECATUR.

GEORGIA RAILWAY & POWER COMPANY et al.

v.

MAYOR AND COUNCIL OF COLLEGE PARK.

By the COURT:

1. A judgment of a trial court granting or refusing an injuncti where the same depends upon a question of law, is, upon its affir ance by the Supreme Court, a final adjudication of such question.

2. The rulings of the Supreme Court, upon the interlocutory ord of the trial judge granting an injunction, become the law of t case as to the particular case.

3. An affirmance by the Supreme Court of the order of the low court granting a temporary injunction is a ruling upon all questio of law involved, though the legal contentions may not have be specifically enumerated or mentioned in the opinion of the cou

WRIGHT, *Judge:*

The present case comes up upon the final hearing in the cou below. The exceptions are to the rulings sustaining the general d murrers, the declination of certain requests to charge, and t direction of a verdict in favor of a permanent injunction, and t final decree thereon. The case thus comes before the court t second time for review. The first appeal was from the interlocut order of the trial judge granting a temporary injunction against t plaintiffs in error. A decision therein was rendered September 2 1921. 152 Ga. 143 (108 S. E. 615). Upon the hearing

30 this first appeal the court held that the decision of the court the mandamus case, Georgia Ry. &c. Co., v. Railroad Co mission of Georgia, 149 Ga. 1, was controlling upon the questio then under consideration, and a request for a review of the mandam case was refused by this court; and, immediately following the refu to review the mandamus case, the court held: "And the court further of the opinion, that, independently of this ruling as to t case we are asked to review, the Georgia Railway & Power Compa was without authority to fix the rate which the plaintiffs in t court below sought to enjoin; and consequently the court did not e in granting the interlocutory injunction." The effect of this ruli was, that not only the law in the mandamus case was controllin but that independently, under the questions of law presented in t appeal then under review, the ruling of the trial judge was witho error.

While the plaintiff in error now insists that some ten distinct points f attack upon the validity of the contract are made in the present ppeal that were not made in the mandamus case (149 Ga. 1), it not and can not be insisted that the identical questions of law were ot involved upon the first hearing of the interlocutory injunction 152 Ga. 143, 108 S. E. 615) as are now involved upon this second ppeal.

But it is insisted by plaintiff in error that one question of constitutional objection to the contract, to wit, that it was violative of ction 6389 of the Civil Code, "was not raised or pleaded when the se at bar was before this court, and, though discussed in rgument, was not considered in the opinion, presumably because it as not then properly before the court." The question raised upon is constitutional objection, if not clearly stated in the pleadings, as certainly argued fully and exhaustively before the court. Supplemental briefs and reply briefs were filed upon the effect of the constitutional question involved in section 6389 of the Civil Code, and the ruling in the case of City of San ntonio v. San Antonio Public Service Corporation, 255 U. S. 47, now cited in support of this very constitutional objection, was en cited and was considered by this court in its ruling.

Upon a careful inspection of the entire record, we are unable to nd a question of law or fact that was not involved in the former earing upon the interlocutory order granting the injunction, or in e mandamus case. The same questions of law are reiterated by mendment, reclothed and elaborated; but it is not difficult, upon a reful inspection, to find that we have met them before.

1. This entire litigation, so often before the courts, has revolved ntinuously around the single question as to whether the contract tween the Georgia Railway and Power Company and the Town Decatur was a valid, subsisting contract. This question has twice en definitely ruled in favor of the validity of the contract; and the st ruling (152 Ga. 143, 108 S. E. 615) is clearly res adjudicata, in r opinion, of the present case.

In the case of ingram v. Mercer University, 102 Ga. 226, 228, 9, Chief Justice Simmons delivering the opinion, this court rerirmed the decision in the case of City of Atlanta v. Methodist urch, 83 Ga. 448, holding that "a judgment of a trial court grantg or refusing an injunction, when the same depends entirely upon question of law, is, upon its affirmance by the Supreme Court, a al adjudication of such question." The court in the case of Ingram Mercer University, supra, said: "Under the equity practice which s prevailed in this State since the passage of the act of October, 70 (Civil Code, §§ 5540, 5558), we think that decision is sound d proper. Under that act many cases are brought to each term this court, which involve no questions but those purely of law. The trial judge passes upon the same, and either grants or refuses an injunction. For a speedy determination of the matter, the law provides a 'fast' writ of error to this court, d further provides that this court shall advance the same upon its

dockets, when requested so to do by either party. This has b
the practice since 1870; and as far as we know or can ascertain fr
consulting our reports, the decisions of this court made upon p
questions of law, upon interlocutory injunctions, have been alw
regarded as final and controlling upon the trial judge on the fi
trial before a jury. If it were not so, a great burden has been u
necessarily placed upon this court. A great many of the cases u
these fast writs of error are brought here upon questions purely le
and this court spends hours, days, and even weeks in investigati
those questions; and to say that after all of this labor a decision m
in such a case is merely advisory, and does not bind the trial ju
or this court in the subsequent litigation between the same parti
seems to us to be absurd. During this term of court a case
brought here from the City of Augusta, involving the acts and c
tracts of the city and of a street-railway company in that city, un
the charter of the city and of the railway company, and certa
contracts entered into by the city, the street railway company a
certain steam-railroad companies whose lines ran into the city,
volving only the construction of these charters and of these c
tracts, matters not of fact but of pure law. The decision of th
questions occupied this court for days, in order to arrive at the pro
construction of the law upon the charters and contracts. Acco
ing to the contention of counsel for plaintiffs in error, when t
case is called for final decree in the superior court, the judge the
can treat this decision as a nullity, and if the case be brought ag
to this court, the same grounds may be insisted upon and we will
be bound by the law as declared in that case."

33 The City of Augusta case, above referred to in the qu
opinion, as an illustration of the reason for the ruling sta
is, upon inspection, a case remarkably similar to the one decided
this court (152 Ga. 143, 108 S. E. 615), and now for review u
a second appeal. Note in connection with the decision in the
Ga. 226, the citations of similar authority, as to the rulings u
interlocutory injunctions becoming res adjudicata upon the se
appeal. Guess v. Stone Mountain Granite &c. Co., 67 Ga. 5
Iverson v. Saulsbury, 68 Ga. 790, 73 Ga. 733; Bailey v. Ros
Ga. 735, 71 Ga. 771; Conyers v. Gray, 67 Ga. 329, 70 Ga. 3
Smith v. Hornesby, 58 Ga. 529, 70 Ga. 552; Mayor etc. v. S
mons, 96 Ga. 477, 99 Ga. 400; National Bank of Athens v. Carl
96 Ga. 469. See also Savannah etc. Railway v. Mayor etc. of
vannah, 115 Ga. 137; Collins v. Carr, 116 Ga. 39; Peak v. S
mons, 119 Ga. 63.

2. The rulings of the court upon an interlocutory grant of
junction become the "law of the case" upon the final hearing.
the opinion in Ingram v. Mercer University, supra, this court s
"In the case of Iverson v. Saulsbury, Respess & Co., 68 Ga. 79
appeared that Iverson, as trustee for his wife and her children,
tained an order from the judge at chambers, allowing him to m
gage the trust property for the purpose of supporting and m
taining the cestui que trust. When it was sought to foreclose
mortgage, the cestui que trust filed a bill asking an injun

ainst the foreclosure, upon grounds therein set out. Upon a de-
urrer the bill was sustained, the case was brought to this court,
d a majority of this court held, Jackson, C. J. dissenting, that
While a chancellor sitting at chambers, on full notice to all par-
s, may order a sale of trust property, he has no power to grant
authority to a trustee to mortgage a trust estate, and a mort-
gage so given will not bind the cestui que trust." When
the case came on for final trial in the superior court, the
al judge followed the ruling of this court. The case was again
ought here on that and other matters; and this court held that
was bound by the former decision, that, "although the present
nch disapprove of the majority decision stated, it is binding in
is case." In the opinion it was said: "Whether this decision be
ht or wrong, it is the law of the case; it is res adjudicata." The
ling in the previous case was declared to be the law of the case,
hough in Weems v. Coker, 70 Ga. 746, the court had disapproved
d expressly overruled the principle laid down in 68 Ga. 790.
hile it was not the law of the State at the time the second case
aulsbury), Respess & Co. v. Iverson, 73 Ga. 733) was decided,
t it shows that this court felt bound to enforce the law as decided
en the case was first here on the injunction. They ruled that
hile not the law generally, it was the law of that particular case."
e also 140 Ga. 507, Southern Bell Tel. &c. Co. v. Glawson.

3. As before stated, the sole question at issue upon the former
aring of this case was whether or not the contract between the
orgia Railway and Power Company and the Town of Decatur
s a valid, subsisting contract. Its validity was attacked in a num-
r of ways, and many constitutional objections were raised thereto;
t when this court reaffirmed the ruling in the mandamus case and
ld that, independently of the mandamus order, the trial court
d not err in granting the interlocutory order, it was an adjudica-
n of every attack upon the validity of the contract in question,
en though the numerous objections may not have been specifically
led upon in the opinion of the court. See, in this connection, Mc-
illiams v. Walthal, 77 Ga. 7; Savannah etc. Railway v. Savan-
h, 115 Ga. 137; 1 A. L. R. 725; Hughes v. Morrison, 141
. 476; State of New Mexico v. County Commissioners, 1 A. L. R.
720.

In the light of the rulings above stated, we are convinced
that this case has had its day in court. The validity of this
ntract was attacked in the mandamus case heretofore referred to,
d in the now case at bar. It has had its day in court and the
ling in the 152 Ga. 143 (108 S. E. 615) is not only res adjudicata
every issue involved in the present hearing, but is the "law of
e case" in the case now under review.
What is said in the foregoing opinion as to the case of Georgia
ilway and Power Company v. Town of Decatur is applicable to
d controlling in the other case, Georgia Railway and Power Com-
ny v. Mayor and Council of College Park.

Judgment affirmed. All the Justices concur.

36 Supreme Court of Georgia.

2334.

Atlanta, September 27, 19

The Honorable Supreme Court met pursuant to adjournme
The following judgment was rendered:

GEORGIA RY. & POWER CO. et al.

v.

MAYOR, ETC., OF COLLEGE PARK.

This case came before this court upon a writ of error fro
superior court of Fulton county; and, after argument had, it is
sidered and adjudged that the judgment of the court belo
affirmed. Judges Meldrim, of the Eastern Circuit, and Wrig
the Rome Circuit, were designated by the Governor and pre
on the argument of this case in the place of Atkinson and
JJ., who were disqualified. Chief Justice Fish, Presiding J
Beck, Associate Justices Gilbert and George, and Judges Me
and Wright concur in the judgment rendered.

Bill of costs, $10.00.

Supreme Court of the State of Georgia,

Clerk's Office, Atlanta.

I certify that the above is a true extract from the minutes o
Supreme Court of Georgia, and that —— —— paid the abov
of costs.

Witness my signature and the seal of said court hereto affixe
day and year last above written.

—— ——,

Cle

Supreme Court of Georgia.

3081.

Atlanta April 29, 1922.

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

GEORGIA RY. & POWER CO. et al.

v.

MAYOR, ETC., OF COLLEGE PARK.

This case came before this court upon a writ of error from the uperior court of Fulton county; and, after argument had, it is con-idered and adjudged that the judgment of the court below be ffirmed. Judges Meldrim, of the Eastern Circuit, and Wright, of he Rome Circuit, Sheppard, of the Atlantic Circuit, and Bell, of the lbany Circuit, were designated by the Governor and presided in his case in the places of Chief Justice Fish and Associate Justices tkinson, Hill and Hines, who were disqualified. The Justices and udges presiding all concur in the judgment rendered.

Bill of costs, $15.00.

Supreme Court of the State of Georgia,

Clerk's Office, Atlanta.

I certify that the above is a true extract from the minutes of the upreme Court of Georgia, and that —— —— paid the above bill f costs.

Witness my signature and the seal of said court hereto affixed the ay and year last above written.

—— ——,

Clerk.

38 In the Supreme Court of Georgia.

No. 46335.

GEORGIA RAILWAY & POWER COMPANY, GEORGIA RAILWAY & Elec tric Co., and J. D. Malsby, J. R. Hardin, F. McDonald, Jr., C. M Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L Wills, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield M. E. Hawn, David Hawn, P. E. Davis, and C. Rossler, Plaintiffs in Error,

v.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, Defendants in Error.

GEORGIA,
Fulton County:

Be it remembered that on the 18th day of January, 1922, the came on for trial, and was tried, the case of the Mayor and Council of the City of College Park v. Georgia Railway & Power Company and Georgia Railway & Electric Company, being an application for injunction and being No. 46335, Fulton superior court; said trial coming on before His Honor, Judge George L. Bell, judge of the superior court of the Atlantic circuit, and a jury in Fulton superior court.

Be it remembered that during the pendency of said case and on the 4th day of November, 1920, the following parties applied to the judge of the superior court of Fulton county to be permitted to be made parties defendant in said cause, and to file answers and cross bills therein, said parties being to wit, J. D. Malsby, J. R. Hardin, F. McDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Wills, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis and

39 C. Roessler; and that on said date the judge permitted the aforementioned intervenors to be made parties defendant as prayed for and by order permitted them to file answer and cross bill in said case, and in obedience to said order and permission, said intervenors did file in said case, after being made parties defendant as prayed, their answer and cross bill; praying, inter alia, in said answer and cross bill, that the so-called contract provisions with reference to College Park traffic be declared to be illegal, unconstitutional and void, and that same be cancelled.

Be it further remembered that within the time allowed by law and during the pendency of said cause, the Georgia Railway & Power Company and the Georgia Railway & Electric Company duly filed their answer and cross bill in said cause.

On the 3d day of November, 1921, and Georgia Railway & Power

Company and said Georgia Railway & Electric Company, by leave of court first obtained, amended their answer and cross bill.

During the pendency of said cause the Mayor and Council of the City of College Park, the defendants in error herein, on the 4th day of November, 1920, filed an amendment to their original cause of action and same was allowed. A second amendment was filed by said Mayor and Council of the City of College Park on the 4th day of November, 1920, same being allowed.

The Mayor and Council of the City of College Park filed demurrers to the answer and cross bill and to the amendment to the answer and cross bill of the Georgia Railway & Power Company and the Georgia Railway & Electric Company. The said demurrers to said answer and cross bill and to said answer and cross bill as amended came on for hearing before His Honor, Judge George L. Bell, on the 18th day of January, 1922, at which time, after hearing and argument, the general grounds of the demurrer were sustained and said
40 answer and cross bill, and the amendments thereto, of the Georgia Railway & Power Company and the Georgia Railway & Electric Company, were stricken; the order of the judge striking same being as follows, to wit:

"The demurrer of the plaintiff to the answer and cross bill of the defendants filed November 4th, 1920, and the within demurrer and motion to strike of the plaintiff to defendant's said answer and cross bill, and to defendant's amendment thereto, which amendment was filed on November 3d, 1921, and to defendant's said answer and cross bill, as amended by said amendment, coming on regularly for a hearing, the same are, after hearing thereon, hereby sustained, and said answer and cross bill, and said amendment, and said answer and cross bill as amended, are stricken and dismissed, except only in so far as same either specifically admit or specifically deny the allegations of plaintiff's petition, or specifically allege that for want of sufficient information the allegations of said petition are neither admitted nor denied.

In open court, this January 18, 1922.

GEO. L. BELL,
Judge Superior Court, Atlanta Circuit."

Be it further remembered that The Mayor and Council of the City of College Park also filed demurrers to the answer and cross bill of the intervenors heretofore set out. Said demurrers came on to be heard before His Honor, Judge George L. Bell, on the 18th day of January, 1922, and the court sustained the general grounds of the demurrer to the intervenors' cross bill and dismissed the same; the order passed thereon being as follows, to wit:

"The within demurrer of plaintiff to the intervention of J. D. Malsby et al., coming on regularly for a hearing, the same is, upon the hearing thereof, hereby sustained, upon the general
41 grounds thereof, and said intervention stricken and dismissed.

In open court, this January 18, 1922.

GEO. L. BELL,
Judge Superior Court, Atlanta Circuit."

To the said judgments of the court sustaining the demurrers and dismissing the answer and cross bill, and the amendment to the answer and cross bill, of the Georgia Railway & Power Company and the Georgia Railway & Electric Company, and dismissing the intervention and cross bill of the intervenors as above set out, the Georgia Railway & Power Company and the Georgia Railway & Electric Company and the individual intervenors hereinabove named, the plaintiffs in error herein, then excepted and now except to the same, and then alleged and now allege that the court committed error in sustaining each and every one of the grounds of the said demurrers and in not overruling each and every one of them upon each and all of the grounds and terms set out in the answer and cross bill and the amendment thereto of the Georgia Railway & Power Company and the Georgia Railway & Electric Company, and the answer and cross bill filed by the individual intervenors hereinabove named, and say that the court committed error in not overruling each and every ground of said demurrers, for that the said answers and cross bills and the amendment thereto, of the Georgia Railway & Power Company and the Georgia Railway & Electric Company, set up facts and grounds which would entitle said companies to defeat the action brought by The Mayor and Council of the City of College Park and set up, by way of cross bill, questions of fact and grounds which, under the law and State constitutional provisions, and under the law and constitutional provisions of the constitution of the United States, as therein set out, would entitle said plaintiffs in error to
42 maintain their said answer and cross bill and the amendments thereto and entitle them to the relief which they sought. And the said intervenors say that the court erred in striking their said intervention and cross bill, for the reason that the facts and grounds therein set out and the constitutional provisions, both State and Federal therein presented, entitle said intervenors to maintain their said intervention and cross bill and to have the relief therein prayed.

Be it further remembered that during said trial before the court and jury on the 18th day of January, 1922, the Mayor and Council of the City of College Park introduced the following testimony, and evidence:

A. Introduced in evidence all writings or documents set forth in Exhibits A, B, C, D and E, attached to the original petition; all the writings and documents, Exhibits F, G, H and I, attached to one of the amendments to the petition; all the writings or documents, Exhibit J, attached to the other amendment; it being agreed that the said exhibits were true copies of the purported originals and could be introduced in evidence in lieu of the originals or certified copies.

B. S. A. JOHNSON swore that the facts set out in the petition were true.

C. The original petition in the case of Georgia Railway & Power Company v. Railroad Commission of Georgia and the individual members of said commission; being No. 40900, Fulton superior

court, and being application for mandamus against said commission; which petition is set out in full in the amendment to the original petition in this case and made a part of the record in this case.

D. Counsel for College Park introduced a bill introduced in the house of representatives of Georgia on July 22, 1919, seeking
43 to add to section 2662 of the code of Georgia, the following:

"Provided, That the above provision, to wit: 'that nothing herein shall be construed to impair any valid, subsisting contract now in existence between any municipality and any such company,' shall not apply to any suburban and street railroad company which has its principal office and operates lines of railroad in counties having a population of not less than 75,000 and not more than 125,000."

Said bill was passed by the house of representatives, and reported to the senate. In the senate said bill was amended as follows, to wit: "By adding after the word 'company' in the first section of said act, the words 'and provided that this section shall not operate as a repeal of any existing municipal ordinances.' And also, "By striking all of section one after the words 'population of' and inserting in lieu thereof the words 'of 50,000 or more.'"

Ths bill thus amended passed the senate, but the senate amendment was disagreed to by the house.

E. S. A. JOHNSON, being sworn, testified as follows: "I was Mayor of the City of College Park during the years 1919 and 1920; I have been a resident of College Park for the last twelve years and am familiar with the street car lines and traffic of the Georgia Railway & Power Company and the Georgia Railway & Electric Company in and about the City of College Park. While I became a resident of College Park about twelve years ago, I was living in close proximity to said city, and have often had occasion to visit the same, and before my residence in said city was quite familiar with the lines and traffic of said street railways in and about College Park; that the defendant street railway companies have never charged passengers who boarded cars of said defendants in College Park or debarked from their cars in the City of College Park more than five cents as fares.
44 That, about the year 1906 the Electric Company granted to the public free transfers from College Park to all transfer points on any of its lines and free transfers to College Park from all transfer points on its lines in and about the city of Atlanta; and that neither they nor the Georgia Railway & Power Company have discontinued the practice of giving such transfers as aforesaid from that date until now.

The tracks of said system of street railways are laid as follows in the city of College Park, a double track runs from the north limit south as far as Virginia Avenue; a single track runs from Virginia Avenue south to John Wesley Avenue, right near the old depot of the Atlanta & West Point Railroad; this depot was known about 1905 as the union depot of College Park. Neither of the defendant street railway companies had or have any track which ran as far south as the south limit of the city of College Park. The southern

terminus of said track was, after 1905, and has been all the while until now, at the said John Wesley Avenue, and has never been at the extreme south limit of said city. Said companies have always until now received as fare five cents to any point between the north and south limits of said city on their line; and until some time during the year 1918 received as fares five cents at all points on said College Park lines between Atlanta and College Park. During the year 1918 the Georgia Railway & Power Company began to exact six cents from passengers who boarded or debarked from said defendant's cars at points between the said north limits of the city of College Park and the Atlanta terminus of said line.

The service to and from College Park is entirely inadequate; this information being given by me with relation to the following facts, which I aver to be true; about the time the said power company came before the mayor and council of the city of College
45 Park to ask that said council grant to said company a temporary suspension of its franchise contract of 1905 and to increase the fare to and from College Park to six cents, for the duration of the war emergency, or very shortly thereafter, and after said council saw fit to decline said application, said power company began to withdraw from the College Park lines and traffic the cars of the larger type which it had been using thereon, and began to transfer these cars to other lines and to substitute on the College Park lines and traffic cars of a smaller type and capacity. The cars on said lines are entirely inadequate to handle the traffic to and from College Park; that during the rush hours of practically every day more people are made to stand in the cars than are permitted to sit; that frequently cars with a capacity of sixty odd passengers will be carrying passengers to the number of one hundred and twenty-five to one hundred and fifty.

The population of College Park has increased very much within the last several years; the territory between Atlanta and College Park, and the territory below College Park served by said lines, have grown very materially in population; and the only added facilities provided by said companies for the handling of said additional traffic has been the addition of a few small trippers which run only to Virginia Avenue. There is a line of street railway which runs from College Park to Fairburn, which adds a great volume of traffic to said lines, and said companies have never added any extra facilities for taking care of same. The said Georgia Railway & Power Company has never until now put in operation any trailers on the College Park lines, as recently required of it by the railroad commission."

"Since the 5th day of October, 1920, the day I was served
46 with notice by the defendant street railway companies that on the 20th day of October, 1920, the fares to and from College Park would be increased to seven cents, I have heard many different persons discuss the fact and effect of said notice, and I have heard many of them say that they were going to refuse to pay the seven cents, and that if they were put off the cars they were going to file suits. I have heard such statements by various and sundry persons in said city since the date of said notice and from such facts I can

say that in my opinion if said defendant street railway companies had undertaken to execute the notice mentioned, or were now to execute same, there would be sundry and various suits for damages for such ejections from the cars.

I was present at the council meeting when Mr. P. S. Arkwright, president of the Georgia Railway & Power Company, came before council and ask that council temporarily set aside or disregard its franchise contract of 1905 and permit the power company to collect the increased fares, to wit, six cent fares on the College Park line, and heard the address which he made to council. I was particularly impressed and remember quite well what this gentleman said with regard to this franchise contract, and it was something like this: You hold on to your contract; you have a good contract, and I wouldn't give it up at all; it may stand between your city and a zone system of fares some day; just set it aside for the period of the war emergency; you will then be able to go back to it at the end of that time. I remember that such was the substance of his remarks on this subject. I, as an humble officer of the city, have undertaken to follow the advice of this esteemed gentleman, and to protect the public from the loss of this contract."

A. C. BROOM, being sworn, testified as follows: "I have been a resident of College Park since before the year 1905, and was
47 living in College Park during the years 1905 and 1906, and reside there now. J. M. Walker was mayor of the city during the years 1905 and 1906, but died several years ago. During the year 1906 the Georgia Railway & Electric Company, the predecessor of the Georgia Railway & Power Company, as to the street railway lines in College Park and in and about the city of Atlanta, constructed its double track in College Park. The double track of the Georgia Railway & Electric Company in the city of College Park was being constructed during the year 1906, and some contention arose between the authorities of the city and said company as to the construction of the said double track, or the right to construct same; I do not remember all the details at this time. J. M. Walker, as mayor of the city, intercepted said work of construction and caused same to be stopped for a while. As a result of this disagreement or contention, or thereafter, at least, the said Georgia Railway & Electric Company gave to College Park patrons of said lines in College Park free transfers upon payment of a five cents fare, which permitted them to ride from all points on said lines in College Park to other transfer points on any and all lines of the said company in and about the city of Atlanta, and vice versa; and that they did so use them. Thereafter, the work of finishing the construction of the said double track line in College Park was continued to completion. Since that time, and until now, free transfers with the above mentioned privileges have never been discontinued until now; and neither the Electric Company nor the Power Company ever made any effort to discontinue the issuance of same, as they, and each of them, have all along, since 1906, done, until a petition to discontinue them was filed with the railroad commission of Georgia, sometime during the

year 1918. Since the filing of said application, and since same
48 was denied by the railroad commission, said free transfers have been issued without let or hindrance.

The single line of the said street railway has never been extended further south than John Wesley Avenue, near the freight depot; its southern terminus in College Park was at that point in 1905 and 1906. The double track of said system stops at Virginia Avenue, in said city, and has never been extended further south than that point where it was ended at the time of its completion, on or about the middle or latter part of the year 1906.

That on and after the granting of the franchise in 1905 by the City of College Park to the Electric Company, said electric company began or continued its practice of charging only a five cents fare of all passengers who boarded the cars of said company at any and all points, or stations, of said lines between the southern terminus in College Park and the terminus of said line in the city of Atlanta, and likewise charged such fare of those who boarded said cars at the southern terminus; and I have never heard of anything from either the Electric Company or the Power Company to the effect that they claimed or construed their franchise contract as only applying the fare features thereof to passengers who boarded the cars at the southern terminus of said line in College Park, or at the extreme southern limits of said city, and only at these points, in College Park; and as only applying the fare features thereof to passengers who boarded the cars at the terminus of the College Park line, in the city of Atlanta, when coming southerly towards College Park. I have never heard anything from either of said companies contrary to the idea that such franchise contract of 1905 applied, as to the fare features thereof, to all points between the southern terminus of said line in College Park and the terminus of the same in the city of Atlanta, in both directions.

49 As a member of council during the year immediately following the year of its execution and acceptance, I was in position to ascertain and know of any contention to the contrary, and no such contention was ever brought to the attention of council while I was present, and I have never heard of any having been brought to the attention of council since. I only learned just recently that either the Electric Company or the Power Company ever contended to the contrary of what is above set forth. I never heard of any claim to the effect that such contract covered fares only from the south terminus of said city, or from the south limit of said city and only to the terminus in Atlanta until right recently.

Passengers have boarded said cars at all points on said lines, in College Park, paid only a five cent fare, and have been carried to other points on said company's system in and about the city of Atlanta, without let or hindrance on the part of said companies, or either of them, or of their employes; and such is a fact today. No greater fare than that of five cents has ever been charged or collected by either of said companies for passage from all stations in College Park to all stations between College Park and the Atlanta terminus of said lines, and vice versa, to my knowledge.

Until the year 1918, both the electric company and the power company charged only a five cents fare from all stations between the south terminus of said line in College Park and the terminus of said line in Atlanta, and vice versa; since that time the said power company has been charging a greater fare of those boarding the College Park cars north of College Park and going to points between that point and Atlanta; and have been charging a greater fare of those disembarking from said cars between Atlanta and College Park, coming south.

50 Such charges and privileges have been all the while accorded to all members of the public, whether residents of said College Park now, or heretofore, or not. Such residents as have come into College Park since the date of said franchise contract have had the advantage of the same, without let or hindrance. No question as to the right of that part of the city, or the north side of the same, which has been added since the date of said contract, has ever been raised by either of said companies, to my knowledge or information.

At the time the said franchise contract was made the road in College Park, in which the tracks were planted, was a chert road, the material thereof being what is known as chert, or fine rock and rock sand or crushed, so to speak. On account of the presence of the two street car tracks it has been necessary for the city to widen the said chert road; that of the road as it stood when the double tracks was laid the said tracks covered about half or more of the same, and made it dangerous for pedestrians, and other vehicles, and it was widened."

F. The following letter from P. S. Arkwright, president, to the Mayor and Council of the City of College Park, to wit:

"Atlanta, Ga., April 23, 1909.

To the Honorable Mayor and Council of the Town of College Park.

DEAR SIRS:

In November, 1905, this company was granted by your Honorable body the right to extend its street car tracks along the chert road within the limits of the town of College Park such distance as it desired within the period of five years from that date.

We are informed that application has been made to you for the right to construct a track for an interurban railway to Fair-

51 burn, Georgia, extending from the present terminus of our line on the chert road to the southern limits of the town of College Park, and that you hesitate about granting this right until you know whether this company desires to exercise its franchise along the road beyond the present terminus of its line.

In order that the right may be granted to the interurban company, this company is willing to waive its right to construct a track on the chert road south of the present terminus of its line at College Park, that is to say, if you desire to grant the franchise to the Fairburn

company and it exercises same by constructing a track on th
chert road south of the present terminus of this company's line, th
company will not construct any track on that portion of the ch
road under the franchise above referred to.

Yours very truly,
(Sig.) P. S. ARKWRIGHT,
President."

G. It was agreed that the defendant, Georgia Railway & Pow
Company, held, occupied and operated the lines of railway as less
under a lease from the Georgia Railway & Electric Company for
term of 999 years, the lease being dated in the year 1912.

H. Introduced an extract from paragraph 3 of the amendment
the answer and cross bill of the Georgia Railway & Power Co
pany and the Georgia Railway & Electric Company, filed the
day of November, 1921, as follows, to wit:

"On November 6, 1905, the city of College Park, a municipal co
poration of the State of Georgia, upon petition of the Georgia Ra
way & Electric Company (a street railway company, and the pred
cessor in title of the Georgia Railway & Power Company
52 granted to the said Electric Company a permission (hereina
after called a franchise) to lay a double track upon one
its then streets. In said ordinance, the following provision was ma
as to fares: 'That no greater fare than that of five cents for ea
passenger be charged for passage from the southern limits of sa
city of College Park to some central point in the city of Atlanta.

I. The application of the Georgia Railway & Power Compan
filed in the summer of 1920, to the railroad commission of Georg
to increase street car fares; said application being in brief, the pe
tion filed by the Georgia Railway & Power Company to the railro
commission of Georgia for permission to increase fares on all lines
railway operated by the Georgia Railway & Power Company, inclu
ing all lines of said company exclusive of the Town of College Pa
and the North Decatur line.

Be it further remembered that during the trial of said case bef
the jury, before the court had charged the jury or directed the ju
to find a verdict, the plaintiffs in error requested the court, in wr
ing, to charge the jury as follows:

"First request to charge: I charge you that in rendering a verdi
you could not and should not include the territory added to th
municipal limits of College Park by the acts of the legislature pas
subsequent to the making of the claimed contract.

"Second request to charge: I charge you that you should exclu
from your verdict and from the operation of the claimed contra
sued upon the territory added to the town of College Park subsequ
to the making of the claimed contract.

"Third request to charge: I charge you that the five cents fare provision of the claimed contract only applies to passage for
53 passengers from the southern limits of the line of College Park to some central point in the city of Atlanta.

"Fourth request to charge: I charge you that you should exclude from your verdict and from the operation of the claimed contract sued upon all passengers riding upon the cars of the street railway company other than those who board the cars at the southern limits of the line in College Park coming to some central point in the city of Atlanta.

"Fifth request to charge: I charge you that you should exclude from your verdict and from the operation of the claimed contract sued upon any passengers boarding the cars on the line in question without the town of College Park going to any part of College Park.

"Sixth request to charge: I charge you that you should exclude from your verdict and from the operation of the claimed contract in question the giving of transfers and that the street railway company cannot be required to give transfers where only the claimed contract fare provision of five cents is charged.

"Seventh request to charge: I charge you that in rendering your verdict you could not and should not hold that the railroad commission had jurisdiction to increase the service on the part of the College Park line claimed to be covered by the contract.

"Eighth request to charge: I charge you that the railroad commission could not add on to the provision of the claimed contract any order requiring the street railway company to issue transfers to passengers paying the 5 cent fare under and by virtue of any right conferred by the claimed contract.

"Ninth request to charge: I charge you that the railroad commission of the State of Georgia cannot by its orders add to the
54 claimed contract so as to make said contract cover transportation for passengers from the city of Atlanta to College Park or to any point in College Park."

The above written requests were made as separate and specific requests. The court failed and refused to give in charge to the jury any one of said written requests, and said requests were refused in the instruction of the court to the jury to find the verdict rendered in said case.

Plaintiffs in error then excepted and now except to the refusal of the court to give each of said written requests to charge, and then alleged and now allege that the court committed error in not giving each of said requests. Said requests contained a correct statement of the law adapted to the issues in said case. Plaintiffs in error then assigned and now assign the refusal to give each of them as error.

At the conclusion of the introduction of the evidence, His Honor, Judge George L. Bell, directed the jury trying said case to find a verdict in favor of the Mayor and Council of the City of College Park;

and under the direction of the court, and following same, the ju on the 18th day of January, 1922, found a verdict as follows, to w

"We, the jury, find in favor of plaintiff, Mayor and Council of t City of College Park, and against the defendants, Georgia Railway Power Company and Georgia Railway & Electric Company, on t issues in this case, and that plaintiff is entitled to the relief prayed f by it.

This January 18, 1922.

T. F. MOORE,
Foreman."

On the 18th day of January, 1922, His Honor, Judge George Bell, entered a final decree upon said verdict and judgment, said d cree being as follows, to wit:

"The jury in the above stated case having found the issue
55 in said case in favor of the plaintiff, and that plaintiff is e titled to the relief prayed for by it, it is therefore considere ordered, adjudged and decreed by the court that the injunction granted as prayed for in the petition of the plaintiff and the amen ment thereto, and said injunction is hereby made permanent; and is further ordered and decreed that the defendants, Georgia Railw & Power Company and Georgia Railway & Electric Company, th officers, agents, employes and servants, be and they are hereby pe manently restrained and enjoined in all respects and particulars prayed for by plaintiff in its petition and amendment thereto; an all the relief prayed for in said petition and amendment thereto, hereby granted.

It is further ordered, and decreed that plaintiff do have and r cover of defendants, for use of officers of court — dollars costs.

In open court, this January 18th, 1922.

GEO. L. BELL,
Judge Superior Court, Atlanta Circuit."

In addition to the exceptions and assignment of errors hereinabo stated, the Georgia Railway & Power Company and the Georgia Ra way & Electric Company and the intervenors herein named, plai tiffs in error herein, individually and collectively, further except to the order of the court sustaining the general demurrers to the a swers and cross bills, and the amendments thereto, filed by the Geo gia Railway & Power Company and the Georgia Railway & Electr Company, and to the sustaining of the general demurrers to the in tervention and cross bill of the intervenors; and further excepted t the verdict rendered by the jury as directed by the court and the d cree thereon, and now except to each of the judgments sustaining th general demurrers of the mayor and council of the city of Co
56 lege Park, the verdict of the jury and the decree enter thereon, exception being made separately and collectively t said judgments on the demurrers, the said verdict and the said d cree; and then assigned, and now assign, the same as error for the fo lowing reasons, to wit:

(*a*) Because, according to the contentions of the plaintiffs in ror, the facts set out in the answer and cross bill as amended, and the intervention and cross bill, there was no legal and binding ntract between the Mayor and Council of the City of College Park nd the Georgia Railway & Power Company and the Georgia Rail- ay & Electric Company, fixing a fare of five cents from all points and from the City of College Park.

(*b*) Because under the facts set out in the answer and cross bill amended, and the intervention and the evidence introduced in id case (according to the contention of the plaintiffs in error), here was no valid, legal contract between the Mayor and Council the City of College Park and the Georgia Railway & Electric ompany and the Georgia Railway & Power Company, fixing a fare five cents for all passengers boarding or alighting from the cars ithin the city of College Park.

(*c*) Because neither the Mayor and Council of the City of College ark nor the Georgia Railway & Electric Company or the Georgia ailway & Power Company had or has any right, power or authority make any binding contract as to fares. Under the constitution of his State, as set out in code sections 6389, 6464 and 6467, of the ode of 1910, said parties cannot make any rate agreement for fixed ares, irrevocable and unlimited as to time.

(2) If the power to make rate agreements did exist (which is de- ied), and in pursuance of such power a rate agreement was entered into between the Mayor and Council of the City of College 67 Park and the Georgia Railway & Electric Company and the Georgia Railway & Power Company, valid when made, such greement, should it become confiscatory (as plaintiffs in error con- end it is in this instance), will become and now is illegal, dis- riminatory and void, and, as to the individual intervenors herein, n violation of the fourteenth amendment to the constitution of the nited States, for the reason that said intervenors are denied the qual protection of the law; in that, for the same and less service ey are charged seven cents, while those entering and leaving the ars in College Park, for a similar and greater service, are charged nly five cents.

(*d*) Because (1) the Mayor and Council of the City of College ark had no statutory nor constitutional power or authority to enter nto rate contracts; (2) said Mayor and Council of the City of Col- ge Park had no authority to make contracts as to fares and trans- ortation to or from any point on a line of railway without the ter- itorial limits of said city.

(*e*) Because the court in holding (as plaintiffs in error contend as necessarily done in this case) that the act of the State of Georgia Acts of 1907, pages 73 et seq.) excepted from the jurisdiction of the ailroad commission of Georgia valid municipal rate contracts made ot for a municipality, but for individuals, of date prior to the pas- ge of said act, and excluded from the jurisdiction of the commis-

sion the lines of railway in territory added to the corporate limits of a city wherein were of force contract rates, but conferred jurisdiction upon the commission to change individual rate contracts previously or subsequently made, and like power to change subsequently made municipal rate contracts, renders said contract unconstitutional as violating the fourteenth amendment to the constitution of the United States, in that it denies the plaintiffs in error, individually
58 and collectively, the equal protection of the laws, and is unjust, illegal and discriminatory in that it places under the commission's jurisdiction some contracts, while omitting others of the same class and relating to the same services, and places under the commission's jurisdiction some contracts and withholding others having no legal or different classification.

(*f*) When the court construed (as plaintiffs in error contend was necessarily done in this case) the act of the general assembly (Acts of 1906, page 650) as extending the alleged contract for five cents fares to the territory added to the corporate limits of the City of College Park by said act, then said act, so construed, violates article 1, section 10 of the constitution of the United States, in that: (1) Said act impaired the obligations of a contract between the county of Fulton and said street railway companies, under which the tracks of said companies were placed in the public roads, included in the extended territory before said territory was added to the limits of College Park, and in which contract there was no five cents fare provision, and the forced introduction into said contract of a five cents fare provision violates and impairs the obligations of said contract.

(2) Said act further impairs the obligations of a contract, in contravention of article 1, section 10, of the constitution of the United States, in that it impairs the obligations of the so-called contract sued on, adding thereto additional burdens by extending to additional territory, not contemplated by the contract and not included in the corporate limits of the City of College Park at the time the so-called contract was entered into by the parties.

(*g*) Because, construing the judgments on the demurrers, the verdict and decree of the court (which, according to the contentions of the plaintiffs in error, was necessarily done) so as to hold that
59 the so-called contract sued on fixed a five cents fare for all transportation to and from College Park and Atlanta; and at the same time construing the act of 1907, pages 73 et seq., as empowering the railroad commission to fix and increase the quantity and quality of the service being performed under the five cents contract; then the said act, so construed, violates the fourteenth amendment to the constitution of the United States, in that thereby the plaintiffs in error, both the street railway companies and the individual intervenors, are denied the equal protection of the laws and their property taken and confiscated without due process of law for, as alleged and set out in the original and amended answers and cross bills, and in the intervention, the service now required by the commission makes the five cents fare not only non-compensatory

but confiscatory as well, and the individual intervenors, under the order of the commission increasing the quality and quantity of the service to be performed under the five cents fare contract, are paying for less service of the same quality seven cents, while the College Park patrons are paying only five cents for a greater service.

This forcible increase in the value and cost of the service, and at the same time the legal enforcement of the five cents fare, when such five cents fare (as plaintiffs in error contend) is far below the cost of the service, is in violation of the fourteenth amendment to the United States constitution and is the taking of the private property of the plaintiffs in error without due process of law.

(*h*) Because, construing the judgments on the demurrers, the verdict as directed and the decree thereon (which according to the contention of the plaintiffs in error, was necessarily done) as holding that the act of 1907 (pages 73 et seq.) conferred upon the railroad commission of Georgia the right, power and authority to increase the quality and quantity of service to be performed in the transportation of passengers to and from the City of College Park, as keeping in effect the five-cents fare provision and upholding the orders of the commission increasing the quality and quantity of the service, then said act of 1907, so construed, and the commission's order thereunder, are unconstitutional and violate Article 1, Section 10, of the constitution of the United States, in that the obligations of the contract sued on are impaired thereby, in that the five-cents fare is maintained while the quantity and quality of the service is increased over that provided in the contract.

(*i*) To compel the plaintiffs in error to operate their lines in the City of College Park (as, according to the contentions of the plaintiffs in error, was necessarily done in this case), and to continue the confiscatory rate of five cents, then the said five-cents fare provision violates the fourteenth amendment to the constitution of the United States, as set out in the original and amended answer and cross bill and the intervention.

(*j*) To deny to the plaintiffs in error, Georgia Railway & Power Company and Georgia Railway & Electric Company, the right to terminate their franchise contract with the mayor and council of the City of College Park, and to abrogate and surrender their entire right to maintain and operate their lines within the limits of College Park, and to deny to said railways the right to cease to operate said lines when the claimed contract for five-cents fares is confiscatory, and has been so held by the railroad commission of Georgia (as contended by the said railway companies in this case); (1) renders the entire franchise contract sued on, as thus construed, violative of the fourteenth amendment to the constitution of the United States, for it denies to the plaintiffs in error the equal protection of the laws and due process of law; and compels the said railway companies to perpetually devote their property to the public use without just and adequate compensation. (2) To compel the intervening plaintiffs in error to make up any part of said confiscatory

rates denies them the equal protection of the law and compels th to devote a part of their property to public use in contraventio the provisions of the fourteenth amendment to the constitutio the United States, in that their property is taken to make up a ficiency in the revenue of the said railway companies, for wh they are in no way responsible and without reference to the va of the services rendered then by the said railway companies.

(*k*) Because, according to the contentions of the plaintiffs error, the judgment on the demurrers, the verdict and the decree the enforcement of the claimed contract violates each and all of provisions of the constitution of this State and of the constitutio the United States in manner and form as set out in the answer cross bill filed by the Georgia Railway & Power Company and Georgia Railway & Electric Company, and the amendments ther and the intervention and cross bill filed by the intervenors herein

(*l*) Because the grant of the six-cents and seven-cents fares by railroad commission of Georgia in all of the territory served by railway companies, except as to transportation and fares to and fr College Park, made any rate contract theretofore existing (as pla tiffs in error contend) between the Mayor and Council of the C of College Park and the Georgia Railway & Electric Company the Georgia Railway & Power Company discriminatory; and the fore the said five-cents fare provision is illegal, unconsti
62 tional and void, and violates in manner and form alleged the State and Federal constitutional provisions as pleaded plaintiffs in error in their original and amended answer and c bill and the intervention, in that it discriminates against all of t other patrons of the lines of the Georgia Railway & Power Compa and especially against the intervenors herein named and against t municipalities and localities in which said intervenors reside.

(*m*) Because, according to the contention of the plaintiffs error, under the facts set out in the original and amended answer a cross bill, the said five cents fare contract is confiscatory becaus is not more than one-third of the real cost of the service, and a result thereof the deficiency in said cost must be borne either the said railway companies or a part of it will fall upon the int venors herein named, and to the extent that the said five-cents f lacks being a fair and just return for the service rendered, t Georgia Railway & Power Company is thereby deprived of its pr erty without due process of law and is denied the opportunity fully comply with its duties and obligations to the balance of patrons as a public service corporation.

(*n*) Because the judgments on the demurrers, the verdict and t decree, according to the contention of the plaintiffs in error, for the Georgia Railway & Electric Company and the Georgia Railw & Power Company to comply with a discriminatory, illegal and u constitutional contract, prohibited not only by the constitution a civil and criminal laws of this State, but as well by the constitu

f the United States, in manner and form as set out in the original nd amended answers and cross bills and in the intervention.

3 (*o*) Because it is undisputed that the limits of the City of College Park were extended in the year 1906; and the laimed contract between the railway company and the city could ot be extended, as plaintiffs in error contend, to include the erritory added to College Park at that time, and said extension act ould not withdraw said extended territory from the jurisdiction of he commission, as provided by the act of 1907; (1) Because the enorcement of the extension of the claimed contract over the territory dded in 1906 would be the denial of the commission's jurisdiction ver said territory as fixed and regulated by the act of 1907; and beause (2) the mere extension of the limits of the City of College ark does not extend the claimed contract so as to cover the added erritory and deny to that territory the jurisdiction of the commision.

(*p*) Because the Georgia Railway & Electric Company and the eorgia Railway & Power Company should have been granted their njunction on each and every one of the grounds set out in their ross bill and amended bill.

(*q*) Because each of the intervenors named herein should have een granted an injunction upon their cross bill, on each and every ne of the grounds therein set out, and the so-called five cents fare hould have been cancelled as prayed for by said intervenors.

(*r*) Because the Georgia Railway & Electric Company and the eorgia Railway & Power Company are perpetually enjoined from utting into effect the seven-cents fare, when no such fare was fixed nd authorized by the railroad commission of Georgia, on all of the ines of the said railway companies not covered by valid, subsisting ontracts, and are perpetually enjoined from charging a seven-cents are from all points within the present limits of the City of College Park to all points without, and from all points without the 4 present limits to all points within said limits; (1) although said claimed contract (as contended by the plaintiffs in error) id not make a contract between the Mayor and Council of the City f College Park and the said railway companies, fixing a five-cents are from all points within the City of College Park to all points with-ut, and from all points without to all points within the City of ollege Park. (2) According to the contention of the plaintiffs in rror, the so-called five cents fare contract was only with reference o fares from the southern limits of the said City of College Park to ome central point within the City of Atlanta. (3) That no conract as to fares was ever entered into with reference to points on said ines except that no greater fare than that of five cents for each assenger should be charged for passage from the southern limits of he City of College Park to some central point within the City of tlanta; no provision, as plaintiffs in error contend, was made for assage from any point without the City of College Park to any point ithin said city.

(*s*) Because, construing the provisions of the Act of 1907, pag
73 et seq., as valid, as was necessarily done by said judgments, ve
dict and decree, the whole of said act of 1907 becomes unconstitu
tional as fixing a discriminatory and illegal scheme of rates, there
violating sections 6463, 6464 and 6467 of the Code of Georgia
1910, and also in violation of the fourteenth amendment to th
constitution of the United States, in that it denies to plaintiffs
error, and each of them, the equal protection of the law there
guaranteed, in that the effect of this act in the present case is
charge all passengers boarding and alighting from the cars with
the limits of the City of College Park only five cents, whi
65 all other patrons, for a similar and less service, are charg
seven cents.

(*t*) Because the provisions of the Act of 1907, pages 73 et se
necessarily declared to be valid by said judgments, verdict an
decree, is illegal and unconstitutional as fixing a discriminato
and illegal scheme of rates, thus violating Sections 6463, 6464 an
6467 of the Code of Georgia of 1910; also in violation of the fou
teenth amendment to the constitution of the United States, in th
it denies the plaintiffs in error, and each of them, the equal prote
tion of the laws, in that the effect of the act in the pending case
to charge patrons boarding and alighting from cars within the Ci
of College Park five cents, while other patrons, for a like and le
service, are charged seven cents.

(*u*) Because the injunction in this case was sought solely up
the ground that the street railway companies were violating the
contract with the City of College Park; and if, as contended by th
plaintiffs in error, that contract was originally void or thereaft
was terminated, then there ought to be no injunction, although th
street railway companies did not have authority to initiate rate
and it is contended by the plaintiffs in error (1) that the claime
contract was void originally; and (2) if not void originally, it ha
been terminated by timely notice.

(*v*) Because a seven-cents fare was, by the railroad commissi
of Georgia, fixed upon all the lines of the street railways except su
lines or parts of lines as were affected by a valid subsisting contra
and if the contract herein was void originally or had terminated,
claimed by the plaintiffs in error, then the rate of seven cents fix
by the commission would be the rate fixed for all lines of the stre
railway companies, including that part of the lines of th
66 street railways included within the present limits of the Ci
of College Park; and it would therefore be error for the co
to enjoin the collection of the seven cents fare upon the lines
the said street railways.

(*w*) Because, if there was in existence a valid, subsisting contra
between the City of College Park and the said street railway co
panies, the intervenors herein were not parties to such contract an
therefore bound by none of its provisions; and the charge of sev
cents against the intervenors, while the patrons boarding or alig

ng from the cars within the corporate limits of the City of College Park were charged only five cents, was a gross discrimination against the intervenors and had the effect of denying to intervenors the equal protection of the laws, as guaranteed by the constitution of the State of Georgia and the constitution of the United States, as set up in the original and amended answers and cross bills herein.

(*x*) Because, if the contract was originally a binding contract between the parties, it was a contract at will and has, before the bringing of this suit, been terminated by timely notice upon the part of the street railways; and if such contract was terminated, as contended by the plaintiffs in error, then there was, at the time of the filing of this suit, no contract in existence between the Mayor and Council of the City of College Park and the street railways, and, under the order of the commission, a seven-cents fare was the legal and just fare to be charged to and from College Park.

(*y*) Because, if the City of College Park had the right to make a contract with the street railways, that right was limited to making a contract for a fixed date or time not too long extended, and the effort to make a perpetual contract, as is here endeavored to
67 do, makes said contract void; and if said contract is void, as is contended by the plaintiffs in error, then at the date of the bringing of this suit there was no contract between the Mayor and Council of the City of College Park and the street railways, and such claimed contract could not therefore be the basis of the injunction granted in this case, and the seven-cents fare fixed by the commission would extend to and from within the limits of the City of College Park, as well as over all the other portions of the lines of said street railways.

(*z*) Because the claimed contract between the Mayor and Council of the City of College Park and the street railway companies only provided for a five-cents fare from the southern limits of College Park to some central point in the City of Atlanta. The defendant in error set up and the court sustained an order of the commission establishing and enforcing the same fare between two points in both directions, and by reason thereof contended that as a result of said order a five-cents fare should be charged from Atlanta to College Park. The sustaining of this contention was a ruling by the court that this power of the commission to grant this order adding transfers to the contract rate of five cents was conferred by the act of 1907. Said act so construed increases the burden, by enlarging the scope, of said five-cents fare contract, in that two five-cents trips, instead of one, was provided for; thereby impairing the obligations of said contract, in violation of article 1, section 10, of the constitution of the United States.

(*aa*) Because said five-cents fare contract was impaired in violation of the constitution of the United States, article 1, section 10, by the order of the commission giving to the College Park patrons transfers in addition to the five-cents fare claimed under the
68 contract. The contract provided for a straight fare of five cents, and not at all for transfers. The commission ordered

the issuance of transfers to each five-cents College Park patron d
manding them, although all the other patrons of the railways co
enjoy transfers only when paying a seven cents fare.

The addition of transfers by the commission's order, acting und
the jurisdiction claimed under the act of 1907, increased the burd
of the five-cents fare contract to the extent of the transfers so adde
The act of 1907, so construed, and the transfer order of the comm
sion impaired the obligations of the five cents fare contract, in viol
tion of article 1, section 10, of the constitution of the United State
and to the extent of the value of said transfer took the property
the railways for the use of the public without just compensation.

This bill of exceptions contains all the evidence necessary to
clear understanding of the errors complained of. The defendant
error herein is the Mayor and Council of the City of College Par
the Georgia Railway & Electric Company and the Georgia Railw
& Power Company and the individual intervenors herein are ma
parties plaintiff in error.

The plaintiffs in error herein designate and specify as material
a clear understanding of the errors complained of, the following par
of the record, to wit:

(1) The original petition of the Mayor and Council of the Ci
of College Park, together with the date of filing and the exhibits a
tached thereto.

(2) The two amendments to the original petition of the May
and Council of the City of College Park, with the order thereon an
the exhibits attached thereto.

(3) The demurrers of the Mayor and Council of the City o
69 College Park to the answer and cross bill of the Georgia Rai
way & Power Company and the Georgia Railway & Electr
Company; together with the orders and judgments thereon.

(4) The renewed demurrers of the Mayor and Council of the Ci
of College Park to the amended answers and cross bills of the Georg
Railway & Power Company and the Georgia Railway & Electr
Company, together with the judgments and orders thereon.

(5) The demurrers of the Mayor and Council of the City of Co
lege Park to the answer and cross bill of the individual intervenor
together with the judgments and orders thereon.

(6) The answer and cross bill of the Georgia Railway & Powe
Company and the Georgia Railway & Electric Company.

(7) The amendment to the answer and cross bill of the Georgi
Railway & Power Company and the Georgia Railway & Electr
Company, together with all orders and acknowledgements thereon.

(8) The answer and cross bill of the individual intervenors, to
gether with the order thereon permitting them to be made parties
defendant and permitting the filing of their answer and cross bill.

(9) The verdict of the jury and the judgment and decree of th
court entered thereon.

And now come, within the time allowed by law, the Georgia Railway & Power Company and the Georgia Railway & Electric Company, and the individual intervenors hereinabove named, to wit: J. D. Malsby, J. R. Hardin, F. McDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Wills, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn,
70 David Hawn, P. E. Davis and C. Roessler, and present this their bill of exceptions and pray that same may be certified as true, and that the clerk of the superior court of Fulton county be directed to make copies of the parts of the record specified, in order that the errors complained of may be considered and corrected.

COLQUITT & CONYERS,
J. PRINCE WEBSTER,
ROSSER, SLATON AND HOPKINS,
Attys. for All the Plaintiffs in Error.

Certificate.

I do certify that the foregoing bill of exceptions is true, and contains all the evidence, and specifies all of the record material to a clear understanding of the errors complained of; and the clerk of the superior court of Fulton county is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the present term of the Supreme Court of Georgia, that the errors complained of may be considered and corrected.

This January 30, 1922.

GEO. L. BELL,
Judge S. C. A. C.

We hereby acknowledge due and legal service of the within bill of exceptions; copy received; all other and further service waived.
This January 30, 1922.

GEO. P. WHITMAN,
Atty. for Defendants in Error.

P. O. Address: 608 Atlanta Trust Co. Bldg., Atlanta, Ga.

71 Filed in office Jan. 31, 1922.
ARNOLD BROYLES,
Clerk.

GEORGIA,
Fulton County:

I hereby certify, That the foregoing bill of exceptions hereunto attached, is the true original bill of exceptions in the case stated, to wit, Georgia Railway & Power Co. et al., plaintiff in error, v. The

Mayor & Council of City of College Park, defendant in error, a
that a copy hereof has been made and filed in this office.

Witness my signature and the seal of court affixed this the 13 d
of Feb., 1922.

[SEAL.] ARNOLD BROYLES,
Clerk Superior Court Fulton County, Georgia,
ex Officio Clerk City Court of Atlanta.

[Endorsed:] Case No. 3081. Supreme Court of Georgia. Marc
1922. Georgia Railway & Power Co. et al. versus Mayor & Coun
of College Park. Bill of Exceptions. Filed in office January 31
1922. Arnold Broyles, C. S. C. Filed in office Feb. 15, 1922. W
E. Talley, D. C. S. C. Ga.

72 GEORGIA,
Fulton County:

To the Superior Court of said County:

The petition of the Mayor and Council of the City of College Par
a municipal corporation of said State, respectfully shows to the cou
the following facts:

1. That the Georgia Railway & Power Company, a corporation
hereinafter called the power company, has its principal office in sa
county, and there operates a line and lines of street railway.

2. That the Georgia Railway and Electric Company, a corpo
tion, hereinafter called the electric company, has its principal offi
in said county.

3. That on the 29th day of July, 1901, your petitioner grante
to E. Woodruff et al., a franchise contract, which franchise contra
was transferred on the 1st day of February, 1902, to the Atlan
Railway and Power Company; that said franchise contract wa
amended on the 3d day of April, 1902; that the said franchise co
tract was according to the information of petitioner trans-
ferred to the Georgia Railway & Electric Company, its successo
and assigns; that such transfer was consented to by the City of Co
lege Park, the petitioner, on the 15th day of April, 1902; that a
copy of said franchise contract is hereto attached as a part hereof an
marked Exhibit "A."

4. That on the 6th day of November, 1905, your petitioner grante
to the Georgia Railway & Electric Company its successors and assigns
the franchise contract set forth as Exhibit "B" hereto attached as a
part hereof.

5. That for several years past the said power company has bee
operating the property, rights and franchises of the said Electri
Company and the street railway lines of the Electric Company, in
and around the city of Atlanta, including its lines in the city o
College Park, under and by virtue of some character of lease
73 the full terms and effect of which are unknown to your peti-
tioner; that your petitioner is informed, believes and s

harges that said lease arrangement was made on or about the year 912; and that since that time the system of railways has been perated by the power company under said arrangement.

5. That on or about the year 1906, before the electric company ad finished the construction of its double track in College Park hich it had the right to do under the above mentioned franchise ontract of 1905, the electric company granted free transfers to assengers to and from College Park, to and from other transfer oints on the lines of the said electric company.

6. That when the said electric company's line to Hapeville was ompleted free transfers were given to passengers to and from ollege Park and to and from Hapeville.

7. That from and after the making of the franchise contract of 905, as above set forth, the said electric company began to charge ve cents fare to Atlanta from College Park, and from Atlanta to ollege Park, and continued this course until the lease agreement bove mentioned was made; and that since that time its lessee, the id Power Company has continued to charge five cents fare to tlanta from College Park, and from Atlanta to College Park; that he construction placed upon the said franchise contract of 1905, bove set forth, by the subsequent conduct of the parties, the said lectric company and the said power company as well as the said city, our petitioner, shows that said contract covered fares from College ark to Atlanta and — versa.

8. That there has never been any discontinuance of the charging f a five cents fare for such service either by the said electric com- any or the said power company.

9. That on the 23d day of December, 1909, the railroad commis- ion of Georgia passed what is known as general order number 14; that under the laws of this State said general order number 74 14 has the effect of law, as relating to the subject matter of said order; that said general order number 14 is hereto ttached as a part hereof and marked Exhibit "C."

10. That when the said power company took charge of the electric ompany's system of street railway, and begun to operate the same, t likewise kept in *begue* the free transfer privilege to and from ollege Park, the same as was done by the said Electric Co., and since hat time there has been no cessation of the same.

11. That sometime during the year 1918, the said power com- any filed with the railroad commission of Georgia application set- ing forth certain facts and circumstances which it claimed entitled t to charge six cents fare where it was before charging five cents fare, nd to charge two cents for all transfers; and prayed the said com- ission to put such new schedule of rates into operation.

12. That the municipalities of Atlanta, Decatur, Hapeville, East oint, College Park and others, were duly notified of said application;

and all or some of them, including College Park, took part in defe ing against said increase.

13. That a copy of this application is attached to a petition f mandamus, by the said power company against the said railro commission of Georgia, said case being number — of this court; a petitioner not having the time to copy and attach a copy of the sa to this petition, hereby refers to the same, adopts the same as a m full and complete illustration and exhibit of the facts therein forth, for the purposes herein set forth.

14. That upon the first hearing upon said petition, before the s commission, the said commission held itself to be without jurisdict to grant the relief therein prayed for, on account of the vari
75 franchise contracts which had been entered into by the s power company or its predecessors.

15. That thereupon the said power company filed in this court petition for a mandamus against the said commission, asking t court to require the said commission to take jurisdiction of t same; that upon the hearing of said mandamus the trial judge den the mandamus absolute; that thereupon the said power compa appealed said case to the Supreme Court of Georgia; that the s Supreme Court affirmed the judgment in part and overruled it part; that the effect of the said judgment of the Supreme Court w to hold that the franchise contract of the City of College Park w valid and subsisting when the Act of 1907 was passed; that its e istence and effect was to deprive the railroad commission jurisdiction to increase the College Park fares; and that so far College Park was concerned the judgment of the trial court w affirmed.

16. That in the said case in the superior court and in the Supre Court, while your petitioner was not an actual party, it was a party that it was being represented by the said railroad commission; th it appeared in said case by counsel; that it assisted in the defense the same, that it was estopped by the final judgment in said case th the estoppel between it and the said power company was mutual; a that the said power company is estopped from attaching the fi judgment in said cause; and the judgment therein is res adjudic between your petitioner and the said power company, by reason the facts herein set forth.

17. That on or about the 2d day of April, 1919, the said railro commission finally acted upon the said application of the power co pany, under the mandamus, and entered an order therein, the form part of which is hereto attached as a part hereof and marked Exhi "D."

76 18. That on or about the 15th day of April, 1919, the sa power company filed with the said railroad commission petition asking to withdraw free transfers from its College Pa traffic, claiming that it's not bound to give free transfers by a contract with said city, and claiming that it was discriminatory

e free transfers by any contract with said city, and claiming that was discriminatory to give free transfers. That the said city deded against said application, claiming that it was not disminatory in favor of College Park for the said power company to e free transfers, but that it would be discriminatory to take them ay from them, inasmuch as they were paying the highest fare uired of them by law, while other parts of the public were having e transfers while paying likewise the highest fare required by . That upon hearing the said commission finally denied the said plication.

19. That recently the said power company filed another application h the said railroad commission praying for the right to charge ht cents fares, except as prohibited by the contracts with Decatur d College Park; that upon a hearing the said commission pertted it to charge a fare of seven cents where a six cents fare had eviously been charged, with one or two exceptions.

20. That on or about the 5th day of October, 1920, the said electric mpany and the said power company served upon the authorities of llege Park, a certain notice in writing, copy of which is hereto ached as part hereof, and marked Exhibit "E."

21. That two regular sessions of the general assembly of Georgia ve been held since the ruling of the Supreme Court in the said ndamus case; that the general assembly of Georgia has not passed any measure or bill nullifying the said franchise contract with your petitioner, or nullifying the effect of the proviso in the act of 1907, or giving the said commission the power to inease College Park fares, or increasing said fares itself, or giving any her agency of the State the power to do so; that on the other hand e general assembly of Georgia, expressly refused to nullify the ect of said proviso or to give the railroad commission jurisdiction r rates fixed on such contracts, and again exercised the sovernity of this State in favor of these contracts.

22. That conduct on the part of said power company in line with eir threat set forth in said written notice, Exhibit "E" will be an solute violation of said general order number 14 of the commisn, Exhibit "C," in that it is thereby required not to change the tus of fares, transfers or service, then existing either by virtue of luntary agreement or order of the commission; that at the time d general order number 14 was passed the said electric company e predecessor of said power company was charging a five cents re to and from College Park, and giving free transfers; and that order of the said commission nor of any other functionary of the vernment has given it the power to change the said status.

23. That conduct on the part of said power company in line with eir threat set forth in said written notice, Exhibit "E," will be an solute violation of said order of the commission, as set forth in der of the commission, Exhibit "D," in that by said order it was quired to continue to charge only a five cents fare as to College

Park, and to give free transfers as before practiced by said p
company.

24. That conduct on the part of the said power company in
with their threat set forth in said written notice, Exhibit "E,"
be an absolute violation and breach and continued br
78 of the franchise contract set forth in Exhibit "A" and
hibit "B;" that a seven cents fare has not been legally
regularly fixed as to College Park by anybody or any agency o
State having the power so to fix it; that any effort to put such a
into effect by the said power company, or by anybody else at
time, is in violation of law, and in violation of the terms and
ditions of said franchise contracts, that said contracts are now
have all the while been valid contracts; and at the time of filin
this bill they are valid contracts and are fully binding upon
said electric company and the said power company; and the
power company is estopped to attack their validity.

25. That said electric company and the said power company
all the while occupied the College Park street, and operated its
in said city under and by virtue of said franchise contracts; and
and each of them are now estopped from denying their abs
validity.

26. That any such violation of the terms of said contract wi
a positive violation of the laws of said State, on the part of the
power company and said electric company.

27. That said power company and said electric company thre
to be guilty of a breach of said franchise contract and successive
recurring breaches of the same; and gives no reason or justifica
of said threats except that the said contract is now invalid; it
not pretend that any new rate or any rate of seven cents has
regularly or legally put in operation; that it itself has no powe
regulate the rates of fare; that it has received no authority from
said commission, nor from anybody else to put said increased
into operation, and that any effort of it to put in operation
increased fare is in absolute violation of said contract and of
law governing in such cases.

79 28. That said contract was made by the State for
benefit of the general public, and every member of the gen
public has an absolute right to its complete enforcement and
formance; that any effort to put into operation the threats mentio
will cause untold confusion, strife, disorder, and there are no
quate means of avoiding such consequences, except by the inter
tion of an injunction.

29. That there is most likely to be a multiplicity of suits
actions between said power company and various members of
public, if said threats are put into operation.

30. That the damages incident to the violation of said contr
and the recurring violations thereof, will be impossible of comp

ion; that the injury therefrom will be irreparable; that there is no ust or adequate means or method of measuring either the extent of he damage or the extent of the injuries accruing therefrom.

31. That any such effort on the part of said power company to put nto operation such increased fare will result in an impairment of id contract.

32. That any such effort on the part of said power company to put nto operation such increased fare will result in taking the property f your petitioner, and the property of the members of the public, ithout due process of law.

33. That any such effort on the part of the said power company o put into operation such increased fare will be an unauthorized and llegal effort to exert the sovereignity of this State in opposition to he said contract.

34. That the community of College Park has been largely built p and populated on the strength of a five cents street car fare; that he same has been in operation there for a long time; and any unuthorized disturbance of the same will have a very great disorganizing and depressing result on the values of property, and upon the comfort and convenience of the local public.

35. That said power company is not entitled to earn a profit on very part of its entire system, that if it is in fact losing money on the College Parff traffic, which your petitioner denies, the railroad commission has fixed a certain increased fare on its whole system which s presumed to be a fair return on its whole investment; and the fact hat a less fare is operative in College Park and Decatur is of no oncern to it.

36. That the service in and for College Park is inadequate, conrary to the orders of the railroad commission, less adequate than required by the railroad commission and is not worth more than five ents, as a general proposition.

37. That there will be a multiplicity of suits and actions incident o such threatened violation and violations of said contract.

38. That there is no adequate remedy at law either for the protection of your petitioner, or of the members of the public, as to the matters herein set forth.

39. That your petitioner waives discovery as to this bill.

40. That your petitioner offers to do equity, and to submit itself to the imposition of whatever equitable requirements the chancellor will see fit to impose upon it.

41. That the threatened conduct on the part of said companies will be in violation of art. 1, sec. 3, par. 2 of the constitution of Georgia, which provides as follows: "No law impairing the obligation of contracts * * * shall be passed."

42. That the threatened conduct of the said companies will be
violation of art. 1, sec. 10, par. 1, of the constitution of the Un
States which provides as follows: "No State shall pass any law
pairing the obligation of contracts."

81 43. That the threatened conduct of the said companies w
be in violation of art. 1, sec. 1, par. 3, of the constitution
Georgia, which provides as follows: "No person shall be deprived
property, except by due process of law."

44. That the threatened conduct of the said companies will be
violation of the fifth amendment to the constitution of the Un
States, which provides as follows: "No person shall be deprived
property, without due process of law, nor shall private property
taken for public use without just compensation."

45. That the threatened conduct of the said companies will be
violation of the fourteenth amendment to the constitution of
United States, which provides as follows: "Nor shall any State
prive any person of property, without due process of law."

46. That the threatened conduct of the said companies will be
violation of art. 1, sec. 3, par. 1, of the constitution of Ga. wh
provided as follows: "Private property shall not be taken, or da
aged, for public purposes without just and adequate compensa
being first paid."

Wherefore, your petitioner prays as follows:

1. That said electric company and said power company be
strained and enjoined from putting into operation any or all of th
threats set forth in said Exhibit "E" or any part thereof.

2. That said injunction shall continue to operate as against a
increase of fares from College Park to Atlanta, and vice versa, un
the same is allowed by the laws of this State.

3. That said electric company and said power company and ea
of them be restrained and enjoined from in any manner violat
the franchise contracts set forth in Exhibit "A" and "B," and ea
of them.

82 4. That said companies and each of them be restrain
and enjoined from in any manner changing the pres
status as to fares transfers or service as to your petitioner and t
College Park lines.

5. That if it has not already been decreed by the courts, that
be decreed that said franchise contracts set forth in Exhibits "
and "B," and each of them, are valid and subsisting contracts a
now binding between your petitioner and each of said companies.

6. That said electric company and the said power company
required specifically to perform said franchise contracts set forth
Exhibits "A" and "B"; and each of them, and every part of ea
of them.

7. That any and all further relief, both legal and equitable, be granted to your petitioner which may be warranted by the above stated facts.

8. That process do issue requiring the said Georgia Railway & Electric Company and the said Georgia Railway & Power Company, and each of them to be and appear at the next term of this court to answer this bill.

ALFRED C. BROOM,
Petitioner's Atty.

GEORGIA,
Fulton County::

In person before the undersigned authority came S. A. Johnson, Mayor of the City of College Park, with full authority to make this affidavit and knowing the facts, who being sworn, deposes and says that the facts set forth in the above and foregoing petition are true. This the 18th day of Oct. 1920.

S. A. JOHNSON.

Sworn to and subscribed before me, this the 18th day of Oct., 1920.
O. E. McCONNELL,
N. P. Fulton County, Ga.

83 Read and considered. Let the above and foregoing bill be filed. Let the said defendants, and each of them, show cause before me or the judge hearing motions at 9:30 a. m. on the 30 day of Oct., 1920, why the prayers of the above petition be not granted, and in the meantime and until further order of court they and each of them are restrained as prayed for.
This the 18th day of Oct., 1920.

GEO. L. BELL,
Judge S. C. A. C.

GEORGIA,
Fulton County:

We and each of us the undersigned defendants in the above bill and case hereby expressly waives process and the issuance of and service of process and acknowledge service of the above and foregoing bill; copy received, and any and all further service waived. This the 18th day of Oct., 1920.

GA. RY. & POWER CO.,
GA. RY. & ELECTRIC CO.,
By COLQUITT AND CONYERS,
Attys. for Defts.

(EXHIBIT "A.")

Grant of Town of College Park to Lay Track on Chert Road.

Resolved: That the petition of E. Woodruff, Joel Hurt and Thomas K. Glenn, their associates, successors and assigns, for the right to lay a single track, with turnouts and switches, at such points

and of such length as they may now or hereafter deem proper a
expedient, and operate same with an overhead trolley system on t
east side of the chert road to a point near the union depot or throu
the town limits of College Park, is hereby granted, subject
84 the following conditions:

1st. The overhead trolley wire to be supported by brackets on po
on the east side of the street.

2nd. The work to be commenced in sixty (60) days and the li
to be put in operation within twelve (12) months.

3rd. The paving between the rails and two feet on each side to
relaid and maintained by the petitioners in the present good co
dition. If at any time the part of the road occupied by the p
titioners should become in bad condition, and should remain so f
ten days after being notified by the proper town authorities to r
pair same, then the town shall have the right to make the repairs
the expense of the petitioners.

4th. The rail to be used to be the "Shanghad T" of not less th
sixty pounds to the yard, and not less than six inches deep. T
ties to be new and creosoted. The entire work to be done under t
supervision and to the satisfaction of the mayor and council.

5th. Should the petitioners fail to operate a daily schedule at a
time for a period of thirty days, the town shall have the right
remove the tracks from the road at the expense of the petitioners.

6th. This grant is not to be exclusive, the town reserving t
right to grant other street car franchises along the same road, b
this is not to be construed as intending to reserve the right to gra
to other roads the right to use the tracks or road bed of the p
titioners, except to cross same.
July 29, 1901.

Transfer of Grant to Atlanta Railway & Power Company.

Atlanta, February 1, 1902.

For value received the above and foregoing franchise wi
85 all its rights and privileges is hereby transferred and
signed to the Atlanta Railway & Power Company.

JOEL HURT.
E. WOODRUFF.
T. K. GLENN.

Amendment to Grant.

Resolved, That section number 4 of franchise granted July 29
1901, to E. Woodruff, T. K. Glenn and Joel Hurt, be amended
read as follows:

"Section Number 4. The rail to be used to be 4½ inch T of not less than sixty (60) pounds to the yard, the ties to be new and creosoted. The entire work to be done under the supervision and to the satisfaction of the mayor and council."

April 3, 1902.

Consent of Town of College Park to Transfer of Grant to Georgia Railway and Electric Company.

Be it ordained that the Mayor and General Council of College Park hereby consent to transfer to the Georgia Railway & Electric Company, its successors and assigns, the grant and consent heretofore made by ordinance approved July 29, 1901, to Joel Hurt, Thos. K. Glenn, and E. Woodruff, to construct, equip and operate a street and suburban railway along the roads and streets named in said grant, and the consent and permission contained in said grant are hereby regranted and reconsented to the Georgia Railway & Electric Co., its successors and assigns, it being expressly understood that said street railway is to be completed and in operation not later than July 29, 1902.

I, W. M. Hutchinson, clerk of the council of the City of College Park, certify that the foregoing is a true copy of an ordinance unanimously adopted at a meeting of the Mayor and Council of 86 College Park, held April 15, 1902, a quorum being present.

WM. M. HUTCHINSON.

(EXHIBIT "B.")

Grant by Town of College Park to Georgia Railway & Electric Co. to Double Track Its Line Along Chert Road.

City of College Park, Council Chamber, Nov. 6, 1905.

Ordinance No. —.

Section 1. Be it ordained by the Mayor and Council of the City of College Park, That the right, permission, consent and franchise are hereby granted to the Georgia Railway & Electric Company, its successors and assigns, to convert its present single track line of electric railway within the limits of the city of College Park into a double track line of electric railway; and for this purpose to construct, ele-trically equip and operate such double track line of electric railway, and to make such changes in the existing structures as may be necessary to the equipment and operation of such double track line, and to do all other acts and things necessary and incident to the equipment, maintenance and operation of a system of double track electric railway in said City of College Park, provided:

1st. That the course of said double track line shall extend from the northerly limits of the City of College Park, along the street

known as the chert road and along the its continuation as a public road in Clayton county, to the southern limits of the city of College Park.

2nd. That no greater fare than that of five cents for each passenger be charged for passage from the southern limits of said city of College Park to some central point in the City of Atlanta.

3d. That said double tracks be located on the east side of said chert road and of said public road and as near to each other as practicable.

87 4th. That said chert road and said public road, so occupied by said double tracks shall be restored to as good a condition as said roads may be in before the laying of said double tracks and maintained as provided in section 3 of franchise granted Joel Hurt et al. July 29, 1901, and transferred to Georgia Railway and Electric Company by said Joel Hurt et al. July 29, 1901, and transferred to Georgia Railway and Electric Company by said Joel Hurt et al. April 15, 1902.

5th. That no light weight rail be used in the construction of said double tracks than is now used in the present single track.

6th. That an abandonment or a failure to operate any portion of said double track for a period of thirty days by said Georgia Railway & Electric Company, its successors and assigns, except occasioned by act of God, the public enemy, or strikes, shall work a forfeiture of all franchises owned by said company in said City of College Park.

Sec. 2. Be it further ordained. That said Georgia Railway & Electric Company shall have fifteen days from this date within which to accept the foregoing franchise; and if its acceptance within that time be signified in writing, then said Georgia Railway & Electric Company, its successors and assigns, shall have twelve months within which to equip and operate said line of double tracks; but if said double track line shall not be put in operation within twelve months from the date of the acceptance in writing of the foregoing franchise, then said franchise shall stand revoked.

Sec. 3. Be it further ordained. That the life and duration of this franchise herein granted shall be coincident with the franchise now owned by said electric company in said City of College Park.

Sec. 4. Be it further ordained. That all ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

88 Approved by order Council College Park, Nov. 6, 1905.

(Signed) W. WOODS WHITE,
Mayor.

J. M. MASON,
Clerk Council.

Acceptance of Grant.

Atlanta, Ga., November 18, 1905.

Honorable Mayor and Council of College Park,
College Park, Ga.

DEAR SIRS:

In accordance with the requirements of section 2 of the ordinance adopted by your Honorable body, November 6, 1905, providing for the construction of a double track railway line on the chert road through the City of College Park by this company, the Georgia Railway & Electric Company hereby accepts said ordinance and the franchise granted it by the said ordinance, and agrees to the terms and provisions of said ordinance, and agrees to construct electrically equip and operate the double track line of electric railway as provided by said ordinance.

Yours very truly,

P. S. ARKWRIGHT,
President.

EXHIBIT "C."

Office of the Railroad Commission of Georgia.

Atlanta, Dec. 23, 1909.

File No. 9162.

Circular No. 314 is hereby amended by substituting therefor general order No. 14, which becomes effective this day, as follows:

General Order No. 14.

All rates now in effect or which may hereafter become effective, which are not higher than the maximum rates prescribed by this commission, whether such rates are the result of voluntary action upon the part of any company, corporation or person subject to the jurisdiction of this commission, or otherwise, are hereby established as the rates of the railroad commission of Georgia, and no such rates shall be discontinued nor raised without the consent of the railroad commission first being obtained, but all such rates shall continue in force without hindrance, the same as other rates prescribed by the commission. And any and all facilities, privileges or service, now in effect or practiced, or hereafter made effective, extended or practiced which give, grant, extend or allow patrons, shippers, or other persons transacting business with said companies, corporations or persons as much or more of the privileges, facilities or service to which they are entitled by law or by any rule, regulation or order of this commission, whether such privileges, facilities or service are given, granted, extended or allowed as the

result of voluntary action upon the part of such companies, cor
rations, or persons, or otherwise, are hereby established as the requ
ments of the railroad commission of Georgia, and no such privile
facilities or service shall be discontinued without the consent of
railroad commission first being obtained, but all such privileges,
cilities or service shall be given, granted, extended or allowed with
hindrance, the same as other requirements of this commission; p
vided that nothing herein contained shall operate as repealing in
way the provisions of passenger Rule No. 7.

H. W. HILL,
Chairman.

By order of the Board,
CAMPBELL WALLACE,
Secretary.

90 EXHIBIT "D,"

Order of Railroad Commission.

Upon consideration of the record in the above stated applicati
including the decision of the Supreme Court, on appeal in the ma
damus proceedings brought by the company and the mandam
issued by the Hon. Geo. L. Bell, judge of the superior court of Fu
ton county, and also an opinion this date adopted by the commissi
containing its findings of facts and conclusions therein with resp
to the issues involved, which said opinion is hereby referred to a
made a part hereof, the commission hereby amends its order da
August 14, 1918, by adding thereto after schedule O, the follow
rate schedule, together with the conditions and limitations provi
herein:

Schedule P, Street Car Fares.

The Georgia Railway & Power Company is hereby authorized
charge as its maximum passenger fare the sum of — (6¢) cents p
passenger, where a five cent (5¢) fare is now charged, for one co
tinuous ride on its passengers cars over and on its lines of railway,
any zone thereof as now prescribed, except such fares as are fixed
the contracts between the company and the cities of Decatur and C
lege Park, which shall remain as so fixed, provided, however, th
the Georgia Railway & Power Company shall put on sale and sell
its officers and with its conductors books of tickets, containing
coupons, each good for one ride and transfer if desired, at the pr
of one ($1.00) dollar per book.

Order further, that no charge shall be made in the existing ru
and practices of said company as to the granting of transfers or t
transportation of infant children.

Order further, that the effective date of this amendment
91 the commission's order dated August 14, 1918, shall be Au
14, 1919, provided the company shall on or before 12 o'cl

oon, April 9, 1919, file with this commission a duly authorized and xecuted agreement of stipulation to pay as called for by the commis- on sixty (60) per cent of the total cost of any appraisal of its prop- rties, and audit of its books, which may be ordered and directed by he commission under any agreement or understanding hereinafter ntered into between the commission and the city of Atlanta, Ga.

Order further, that three days prior to the effective date of this rder the company shall cause to be posted in all of its cars notice to he public of the authorized increase in street car fares and the effect- ve date of such increases.

C. M. CANDLER,
Chairman.

By order of the Commission.
ALBERT COLLIER.

EXHIBIT "E."

To the Mayor and Council of the City of College Park and the City of College Park:

You are hereby notified that on and after the 20th day of Oct., 1920, the fare to and from and between Atlanta and College Park, n the line operated by the Georgia Railway & Power Company, will e at the rate of seven (7) cents.

Denying the validity or legality of any so-called contract provision imiting the fare to five (5) cents from the southern limits of the ity of College Park to some central point in the City of Atlanta (set ut in the ordinance of the Mayor and Council of the City of College ark November 6, 1905); you are notified that if the provision with eference to fare was binding at any time, it is not now binding or egal and is hereby terminated from and after the above named ate.

2 This 5th day of Oct., 1920.

GEORGIA RAILWAY & POWER COMPANY,
By P. S. ARKWRIGHT,
President.
GEORGIA RAILWAY & ELECTRIC COMPANY,
By JOHN C. HALLMAN,
Vice-President.

Service of the foregoing notice acknowledged this Oct. —, 1920.

Filed in office this the 18th day of Oct., 1920.

T. C. MILLER,
D. Cl'k.

(*Amended Petition.*)

GEORGIA,
Fulton County:

And now comes the plaintiff in the above stated case, and by le of the court amends its petition in the above stated case and alleges follows:

53. That the documents attached to and following this amen ment, and marked Exhibit J, constitute a full, true, complete a accurate transcript and copy of the whole record in the case of Ge gia Railway & Power Company v. Railroad Commission of Geor et al., being number 40,900 Fulton Superior Court; said record be that referred to and adopted in paragraph 13 of plaintiff's origin petition, including the various pleadings, ordered and other do ments therein as shown by the exhibit mentioned.

ALFRED C. BROOM,
Pl'ff's Atty.

GEORGIA,
Fulton County:

In person before the undersigned authority, came S. A. Johns Mayor of the City of College Park, who on oath deposes and s that the above and foregoing amendment is true.

S. A. JOHNSON.

Sworn to and subscribed before me, this 2nd day of Novemb 1920.

R. L. PROCTOR,
N. P. State at Large, Georgia.

93 Read and considered. Let the above and foregoing amen ment be filed, and the same is hereby allowed subject to o jection. This 4th day of November, 1920.

J. T. PENDLETON,
Judge S. C. A. C.

EXHIBIT "J."

STATE OF GEORGIA,
County of Fulton:

To the Superior Court of said County:

The petition of Georgia Railway & Power Company shows as fo lows:

1. The Georgia Railway & Power Company is a resident of th county of Fulton incorporated under the general laws of this St incorporating street railway companies, authorized and empower by its charter to operate, construct and maintain street railways a electric plants for the generation of heat, power and light.

. Under said charter, the Georgia Railway & Power Company r operates and maintains, and has for years past operated and intained a system of street railways, occupying various streets and rate rights-of-way in the city of Atlanta, and in the towns of eatur, Edgewood, Kirkwood, East Point, College Park and Hape-e, and on certain public roads, highways and private rights of way he counties of Fulton and De Kalb, operating said railway system essee of the Ga. Railway and Electric Company.

. The Railroad Commission of Georgia, is a body of public rials, created by the laws of Georgia, with its domicile in the nty of Fulton, said State, consisting of five commissioners, to wit, M. Candler, George Hillyer, Paul B. Trammell, John T. Boifeuil-and J. A. Perry.

. Prior to the act of 1907, it was within the jurisdiction of the railroad commissioners, vested exclusively in them, to determine what was just and reasonable rates and charges to be observed by all railroad companies doing business in this te; and it was further the duty of said commissioners to make sonable and just rates of freight and passenger traffic to be ob-ved on the railroads thereof; and to make reasonable and just rates l regulations to be observed by all railroad companies doing busi-s in this State as to charges for the necessary handling and de-ering of all freight; to make such just and reasonable rules and ulations as may prevent unjust discrimination in the transporta-n of freight and passengers on the railroads in this State, and to ke just and reasonable joint rates for all connecting railroads ng business in this State, and for all traffic or business passing m one of said roads to another.

. By an act approved August 23, 1907, enlarging the duties of l railroad commission, the powers and duties of that body were arged as follows:

"The powers and duties hereinbefore conferred by law when the lroad commission *are* hereby extended and enlarged so that its thority and control shall extend to street railroads and street rail-d corporations, companies or persons owning, leasing or operating eet railroads in this State; provided, however, that nothing herein ll be construed to impair any valid, subsisting contract now in ex-ence between any municipality and any such company, and pro-ded that this section shall not operate as a repeal of any existing unicipal ordinance." (Section 2663.)

6. After the passage of this act of 1907, subject to the provisos therein, it was within the power, and it was the duty said railroad commission to make, to be observed by the Georgia ilway & Power Company a schedule of just and reasonable rates charges for transportation, and from time to time to review said es and charges, increasing or lessening the same as the occasion ght demand, so that at all times the rates, fares, and charges of

said Georgia Railway & Power Company should be just and rea
able, both as to the said power company and to its patrons, the pub

7. The Atlanta Street Railroad was Atlanta's original and pr
cipal street railway. It included the line of Peachtree and Wh
hall streets, Decatur street, Ponce de Leon Avenue, Mitchell Str
Nelson Street, Peters and Broad Streets, Capitol Avenue and ot
streets.

8. On January 1, 1869, the city granted consent to this st
railway company to occupy the streets of said city, by an ordina
one of the conditions of which was as follows:

"4th. The charges for passage on said road shall not exceed two
cents for any through line and not exceeding ten cents for half li
or short distances."

(This appears in City Code of 1899 as Section 1314, and in C
Code of 1910 as 2697.)

9. On December 18, 1882, the City of Atlanta granted its c
sent to the Metropolitan Street Railway Company to occupy certa
streets upon condition that "franchises granted subject to the c
ditions and limitations of ordinances heretofore passed in refere
to the Atlanta and Gate City Street Railroad Companies."

10. On July 4, 1887, the city granted its consent to the Atlanta a
Edgewood Railroad Company to occupy its streets upon t
96 same terms and conditions as those pertaining to Atla
Street Railroad Company, thereby making the same provisi
as to fares for the Atlanta & Edgewood Street Railroad Company
existed for the benefit of the Atlanta Street Railroad Company.

11. On December 7, 1891, the City of Atlanta granted its c
sent to the Atlanta Consolidated Street Railroad Company to occu
its streets as follows:

"The right and franchise consented to and granted to said seve
street railroad companies (including Atlanta Street Railroad Co
pany) are hereby re-consented and regranted to said Atlanta C
solidated Street Railroad Company on the terms specified in the s
grants both as to privileges and obligations."

12. In the consents granted to the constituant compan
of the Atlanta Consolidated Street Railroad Company on Dece
ber 7, 1891, there was no provisions for a fixed fare other than
fare fixed for the Atlanta Street Railroad Company.

13. On August 23, 1899, the City of Atlanta granted a consent
the Atlanta Rapid Transit Company to occupy with its lines t
following streets in said city: Auburn Avenue, Ivy Street, Courtla
Street, Juniper Street, Forest Avenue, Hunter Street, Woodw
Avenue, Cherokee Avenue, Walton Street, Luckie Street, Ja

enue, Gray Street, Kennedy Street, English Avenue and Bellwood enue.

Among the terms of this consent were the following:

"This grant is made on the further condition that the charge for e for a single passenger from any point on the lines of said com- ny to any other point on the lines of said company within the y limits of Atlanta as now or hereafter defined shall not exceed five cents, except on cars that may be run after midnight and before five o'clock a. m., for which fares of single passengers as aforesaid shall not exceed ten cents."

14. Prior to February 8, 1902, the name of Atlanta Consolidated reet Railroad Company had been changed to that of Atlanta Rail- y and Power Company, and there was in existence at said time in tlanta only two street railway companies, the Atlanta Railway and ower Company, and the Atlanta Rapid Transit Company.

15. These two railroad companies, together with the Georgia ectric Light Company and the Atlanta Steam Company desired consolidate, and the consent of the city was sought to permit and thorize such consolidation. This consent of the city was obtained d it was embodied in what is known as the "Consolidation Ordi- nce" of February 8, 1902, a copy of which ordinance is hereto tached marked "Exhibit A."

16. The paragraphs hereinabove include all that can be claimed contracts or franchise ordinance existing between the city of tlanta and the Georgia Railway & Power Company. The net re- lt of these so-called franchise contracts, at the date of the Consoli- ting Ordinance, February 8, 1902, was: (1) All the railroad lines the City of Atlanta, except those of the Rapid Transit Company, d no limit as to fares or had a maximum limit of twenty cents and minimum of ten cents, as hereinabove stated. (2) The Rapid ransit Company had a maximum limit of ten cents and a minimum five cents, as above stated.

16-A. On Oct. 19, 1898, the City of Atlanta granted its consent the Atlanta Railway Company, to construct its lines of railway on rtain streets in the City of Atlanta. One of the terms of such rant is as follows: "And on condition also that said Atlanta Rail- way Company, and its successors and assigns, by accepting this grant, or operating any of the lines covered by this grant, agree upon the payment of one fare not to exceed five nts, to transport any passenger from his initial point within the mits of the City of Atlanta to his destination within the city of tlanta, as its limits now exist, or may be hereafter extended, by ntinuous passage upon any line, etc." (See 1st paragraph on page 80.)

16-B. However, by ordinance adopted March 30, 1899, the City of tlanta, amended the ordinance or franchise last above referred to s follows: Said ordinance "is amended so as to relieve the Atlanta

Railway Company from certain of the conditions annexed b original ordinance to the granting of authority and consent as said, to wit: The City of Atlanta relieves said company as lines to be constructed under said original ordinance fro right reserved by the City of Atlanta to require the granti transfers, and the regulations of fares as therein provided fo copy of said ordinance is hereto attached marked Exhibit – made a part hereof.

16-C. Petitioner avers that the property and franchise Atlanta Railway Company were conveyed and transferred Atlanta Railway and Power Company, were owned and con by it on Feby. 8th, 1902, and thereafter were conveyed and ferred by it to Georgia Railway and Electric Company.

17. As a matter of practice, all the street car lines City of A had, for some time prior to February 8, 1902, charged a fiv fare for day passengers and up to twelve o'clock midnight, a cents passage after twelve o'clock midnight, and until five o'cl the morning.

The Rapid Transit Company had for a considerable time p the month of August or September in the year 1901, sold thre for ten cents, but at the date of the Consolidating Ordi
99 and some months prior thereto, that company had c five cents for day travel, and up to twelve o'clock mid and ten cents for passage between twelve o'clock and five o Both of the street railway systems then in existence had, prior passage of the Consolidating Ordinance, granted limited trans

18. After the passage of the Consolidating Ordinance, A Railway & Power Company, Atlanta Rapid Transit Com Georgia Electric Light Company and Atlanta Steam Compan solidated under the name of Georgia Railway & Electric Com The ordinance itself was elaborate and carefully drawn, and no direct provision as to rates. The only provision relating t was a provision for transfers, wherein provision was made f transfer on payment of one full fare. No amount is specified i ordinance as to what constitutes a full fare.

19. The purpose and intent of this Consolidating Ordina amply stated in the ordinance itself.

"It being the intention hereof to allow the full and fre solidation of the companies heretofore referred to and their erties whereby the freest possible use and profit thereof may to said consolidated company and so that said company ma solidate, control and operate all of said properties as it may subject only to proper police laws and restrictions."

20. At the date of the passage of the Consolidating Ordi there was in the City Code of Atlanta (City Code of 1899, S 1351-H) an ordinance providing that no street railway co thereafter should "be permitted to collect for fares for sing

ngers from one point of the line or system of such company in the city limits aforesaid more than for one continuous trip from five a. m. to twelve o'clock midnight, five cents, nor more then, for one continuous trip 12 p. m. to 5 a. m., ten cents."

The Consolidating Ordinance repealed that provision of the city dinance in the following words:

"That the general ordinance on the subject of street railways and eir operation and control approved August 22, 1899, and contained the City Code, Section 1351-A to 1351-M, both inclusive, be and e same are, hereby repealed."

21. Your petitioner shows that unless there has been made a ntract between the City of Atlanta and your petitioner with refer- ce to fares upon its street railways by virtue of the ordinances ove set out, then there is no contract between the city and your titioner with reference to street railway fares.

22. Petitioner shows that the City of Atlanta neither now has, r has it ever had, except as set out in the charter to the Atlanta reet Railroad Company, any power granted it under the constitu- n or laws of this State to contract with your petitioner as to the res to be charged on its lines of street railway. The City of lanta, therefore, has no power to contract with petitioner with ference to fares, and if it has undertaken so to do the results thereof e void under the law.

23. The City of Atlanta passed an ordinance prior to the Code of 99, known as Section 1314 of that code, as follows: "The charges r passage on said roads shall not exceed twenty cents for any rough line, and ten cents for half lines or short distances." To this section is this foot note: "This section had reference to d lines of the Atlanta Street Railroad Company."

24. This same section was codified in the City Code of 1910, as llows:

"Sec. 2697. Charges for fare on road (this section had reference to old lines of the Atlanta Street R. R. Co.). The charge for passage on said roads shall not exceed twenty cents r any through line, and ten cents for half line or short distances."

25. In 1897 the City of Atlanta pa*dde*d the following ordinances, nown as sections 1335 and 1336 of the Code of 1899:

"Sec. 1335. From and after the first day of May, 1897, it shall unlawful for any company operating electric or other railways or upon the streets of Atlanta, or by itself or its agents, directly indirectly to charge or collect more than five cents for the trans- rtation of any person from any point on said line or lines to any her point on any line or lines owned or operated by said com- ny, whether the same be for a continuous passage on a through e or by transfer to any other line or lines owned and operated said company."

"Sec. 1336. Upon the payment of one full fare, as above provi
it shall be the duty of said railway company to transport such
senger to his destination upon any line or lines of said comp
and to furnish a transfer ticket, without additional charge wher
it is necessary for such passenger to change to the car of any o
line or lines operated by said company, in order to reach his
destination."

The City of Atlanta, in 1898, sought to enforce the above sect
of the code, sections 1336 and 1336, and the Atlanta Consolid
Street Railway Company, one of the predecessors in title and f
chise of petitioner, enjoined their enforcement upon the ground
lack of power in the city. (City of Atlanta v. Old Colony T
Company, 88 Fed. 859.) That case ended any effort on the c
part to fix fares by means of this ordinance.

102 26. In spite of the case in 88 Federal 859, these sect
were re-codified in the City Code of 1910, as sections 2
and 2622 of that Code, the City of Atlanta since the rendition
the decision in the Old Colony Trust Company case and the c
piling of the Code of 1910, has obtained from the legislature
further nor additional charter power with reference to street
way fares.

On August 22, 1899, the City of Atlanta passed the follo
ordinance with reference to street railways:

"Sec. 1351-H. No person, firm, corporation or associaation h
after obtaining authority or consent to construct or operate a
or system of street railways in the limits of the city of Atlanta
now or hereafter defined, shall be permitted to collect for fares
single passengers from one point of the line or system of such c
pany in the city limits as aforesaid, more than for one contin
trip from 5 a. m. to 12 p. m., five cents nor more than for one
tinuous trip from 12 p. m. to 5 a. m. ten cents.

This ordinance was codified in the City Code of 1899 as sec
1351-H and in the City Code of 1910 as section 2758.

28. The ordinances above quoted, known as section 1351-H
the Code of 1899, and as section 2758 in the Code of 1910, h
been repealed by section 6 of the Consolidated Ordinance as foll

"Sec. 6. Be it further ordained, that the general ordinance
the subject of street railways and their operation and control,
proved August 22, 1899, and contained in the City Code, sec
1351-A to 1351-M, both inclusive, be and the same are, hereby
pealed."

This section 6 just above repealing sections 1351-A to 1351-M
the City Code, was modified, however, by section 12 of the repeal
ordinance so that the repeal was applicable only to th
103 companies taking advantage of the Consolidating Ordina

29. Section 12 provided "that no benefit hereunder and no re-
eal of any ordinance or part thereof made hereby, shall accrue or
pply to any of said companies not included in said consolidated
ompany, but as to any company which does not come into the con-
olidation provided for hereby, the city shall and does preserve all
id ordinances and all powers and rights which the city now has
r may hereafter acquire."

30. The Consolidating Ordinance was dealing with all the street
ilway companies and all the electric companies then in Atlanta,
nd it was evidently the purpose of the city to end all the contests
etween these companies, then long outstanding, by bringing them
l under one management and control. To that end, it repealed
s to those entering the consolidation all those ordinances approved
ugust 22, 1899, including the five cent fare provision, but ex-
ressly keeping it in force as to all companies not entering into the
onsolidation.

The result was not that the five cent fare ordinance was wholly
epealed, nor, indeed, in a strict sense, repealed at all. It was re-
ealed as to the consolidating companies, now the Georgia Railway
Power Company, but it remained of force as to all other railway
nd power companies, and was included in the Code of 1899, with
mited application, and was properly incorporated into the new
ode of 1910, together with the consolidating ordinance, with the
ery same limitations.

31. Petitioner shows that it was decided in the Old Colony Trust
ompany case, supra, that the City of Atlanta had no authority to
ass the city ordinance enacted in 1897, and if the city lacked the
harter power to pass that ordinance, it also lacked the charter power
to pass the ordinance of 1899.

04 Your petitioner, therefore, alleges that there are outstand-
ing no valid ordinances fixing street railway fares in the
ity of Atlanta and that the city lacked the charter power to pass
ny such ordinance.

The ordinance of 1897, even if valid (which petitioner denies)
as repealed by the ordinance of August 22, 1899, and the ordinance
f August 22, 1899, was repealed so far as petitioner is concerned
y the Consolidating Ordinance of 1902.

32. Therefore, your petitioner alleges that there is no valid sub-
isting contract now in existence fixing fares, nor was there such
ontract in the year 1907 between the City of Atlanta and your pe-
itioner, nor any municipal ordinance fixing said fares now exist-
ng, nor was any such ordinance in existence in the year 1907.

33. The town of Edgewood was once a separate and independent
unicipality, it has since disappeared, its territory having by an act
f the legislature been added to the City of Atlanta.

34. When existent it granted to Collins Park & Belt Railroad
whose lines are now operated by the Georgia Railway & Power Co.,

by lease from Georgia Railway & Electric Company) the right
occupy the main Decatur road (one of its then streets): "Provid
that the fare shall be five cents and transfers from all parts of Edg
wood to all parts of Atlanta."

This consent was only for a single track.

35. After the Georgia Railway & Electric Company purchas
this Decatur road line from the Collins Park & Belt Railroad Co
pany, it was found desirable to put a double track on the "Ma
Decatur Road" the Town of Edgewood consented thereto as follow

"The rates of fares for the transportation of passengers betwe
any points on said line within the present limits of the to
105 of Edgewood and any point in the city of Atlanta shall n
exceed the rate of fares charged between Inman Park a
other points in the city of Atlanta."

36. This latter consent does not expressly repeal the one ju
above, but it clearly does so by necessary implication. The first pr
vides for five cents without limitation or condition. The secon
makes the fare "between Inman Park and other points in the Ci
of Atlanta" the standard so that the fare might be more or less tha
five cents. If the Railroad Commission should raise or lower th
rates in Atlanta, the fare under the conditions of this consent woul
automatically likewise rise or fall. The condition of this conse
applies only to one line in the Edgewood territory, leaving no co
ditions as to the South Decatur Line.

37. The Georgia Railway & Electric Company in and prior to 19
had two lines in the Town of Decatur, one known as the main D
catur line, bought from the Rapid Transit Company, running nort
of the Georgia Railway and the other known as the south Decatu
line, running South of the Georgia Railroad. There is no preten
that there is any contract franchise or otherwise-fixing rates as t
the South Decatur line.

38. In the original consent for the initial construction of th
main Decatur line there was no rate provisions. Thereafter th
Georgia Railway & Electric Company purchased a line, then in D
catur, from the Atlanta Railway & Power Company. The Georg
Railway and Electric Company in March, 1903, desired to discon
tinue this last line and physically removed it from the streets o
Decatur. This was at first resisted by the town, but afterwards a
agreement was made between the parties consenting to the remov
of the line upon the following basis:

"To never charge more than five cents for one fare upon its mai
Decatur line for one passenger for one trip upon its regular ca
from the terminus of said line in the city of Atlanta t
106 the terminus of same in the town of Decatur and vice versa
though a greater fare may be charged when passengers ar
transported between the hours of twelve o'clock midnight, and fi
o'clock a. m. To grant one transfer ticket upon the payment of o

full fare for the purpose of giving one continuous ride from any point within the town of Decatur upon said Rapid Transit line to any point within the city of Atlanta, on any of its lines in said city and vice versa, etc."

39. The only franchise contract claimed between East Point and this company in existence in 1907, is as follows:

"Passengers from all parts of the town of East Point shall be accorded each and every privilege and right which may be accorded citizens of Atlanta with regard to transportation."

The indefiniteness of this provision is at once apparent. It is not at all certain that it applies to the subject of fares. If so, it would seem to regulate only within the corporate limits of East Point, and not from all points within those limits to all points on the railway system beyond such limits.

40. The only franchise contract that can be claimed that existed between College Park and petitioner in 1907, was as follows:

"That no greater fare than that of five cents for each passenger be charged for passage from the southern limits of said city of College Park to some central point in the city of Atlanta." There was in this franchise no provision as to transfers.

41. Other than is above set out, there was in 1907, in existence no contract franchise or otherwise between petitioner and the towns of Edgewood, Decatur, East Point and College Park, fixing
107 fares to be charged on petitioner's lines of railway, nor except the franchise ordinances above referred to, were there any ordinances in the towns of Edgewood, Decatur, East Point and College Park, seeking to fix the rates that could be charged by petitioner upon its lines of railway.

42. Your petitioner charges that neither of the towns of Edgewood, Decatur, East Point and College Park had charter power to make with your petitioner contracts fixing street railroad fares, and any contracts sought to be made by either of said towns with petitioner was null and void for lack of power on behalf of all said towns to make such contract; nor did either of said towns have charter power to pass any ordinance fixing the rates of fares that petitioner should charge upon its lines of railway.

Under the constitution and laws of this State, the power of fixing railroad fares, either adversely or by contract, is vested in the legislature, and such powers have not been granted to said municipalities by the general assembly.

43. On the 16th day of April, 1918, the Georgia Railway & Power Company filed its petition with the railroad commission of Ga., alleging inter alia:

"That said rates for the service of electric current and street car fares and gas now on file with this Honorable Commission are wholly

inadequate and insufficient to furnish sufficient income to properly care for and preserve its properties and adequately and efficiently serve the public.

"That the said rates are so low as to be inadequate and insufficient to pay the cost of the service and yield a reasonable return on the investment necessary to render the service.

"That it is directly and immediately in the interest of the
108 public locally and throughout the entire territory served by it and for the national welfare that petitioner be granted an increase in its rates in order to keep it a going concern and enable it to properly and effectively serve the public. Petitioner is ready and will disclose at the hearing all facts and give all information and details desired by the Honorable Commission."

44. To this petition, duly filed and served, there was attached a formulated table of rates for gas, electric current and street car fares which petitioner alleged was fair and reasonable and which was necessary to enable petitioner to continue in the discharge of its duties and responsibilities to the public and to preserve it as a useful public service corporation. Your petitioner prayed "the approval of this Honorable body of said table of rates so formulated in order that the same may become effective."

A copy of said petition together with the attached formulated table of rates which petitioner desired to be permitted to charge is hereto attached marked "Exhibit B."

45. After said petition had been filed with the railroad commission and properly served under its rules and regulations, the same was set for a hearing and a painstaking and exhaustive hearing before said commission was had, extending over several weeks.

46. At and during said hearing petitioner brought before the commission oral testimony covering several hundred pages of typewritten matter and introduced into the hearing all of its records and books, all of which, as petitioner contends, showed clearly that the rates and charges which the commission was asked to approve were just, fair and reasonable and necessary for the protection of the public as well as essential to the welfare of petitioner.

47. A defense was made to said petition, Exhibit B, by attor-
neys purporting to represent certain municipalities and
109 manufacturing interest, including among the municipalities the cities of Atlanta and Decatur. The cities of Atlanta and Decatur alone attacked the jurisdiction of the commission to fix the sought for street railway fares.

48. These cities not only deny that the street railway fares which the commission was asked to approve were just and reasonable, but alleged the existence of certain contracts between petitioner and the cities of Atlanta, Edgewood, Decatur, East Point and College Park, which brought petitioner within the proviso of the act of 1907, thereby taking from the commission the jurisdiction to fix rates in said cities in the counties of Fulton and De Kalb.

49. To sustain the contention that the street railway fares and charges which the commission was asked to approve were not just and fair, defendants depended upon the testimony of Mr. Joel Hurt, dealing with what he declared to be the unfair capitalization of the Georgia Railway & Power Company, and upon the testimony, oral and written, introduced by petitioner.

50. On the question as to the jurisdiction of the commission to approve the street car fares and charges sought by petitioner upon its lines of street railway in the cities of Atlanta, Edgewood, Decatur, East Point and College Park and on the roads and highways of the counties of Fulton and DeKalb, defendants introduced before the commission the following testimony:

(1) The charter of the Atlanta Street Railroad Company, dated February 23, 1866, appearing in Georgia Laws, 1865-6, page 201, copy of which is hereto attached, marked "Exhibit E."

(2) Amended charter of the Atlanta Street Railroad Company, dated December 26th, 1890, appearing in Georgia Laws for the
110 years 1890-91, page 283, copy of which is hereto attached and marked "Ex. F."

(3) Charter of the Atlanta Consolidated Street Railroad dated May 16, 1891, which is hereto attached and marked Exhibit "G".

(4) Charter of the Georgia Railway & Electric Company dated Jany. 28, 1902, a copy of which is hereto attached marked Exhibit "H".

(5) Deed from the Atlanta Street Railroad Company to the Consolidated Street Railroad Company, recorded in Book C-4, page 669, of Fulton county records, copy of which is hereto attached marked Exhibit "I".

(6) Deed of Atlanta Railway & Power Company to the Georgia Railway & Electric Company, recorded in Deed Book 160, page 182, of Fulton county records, copy of which is hereto attached marked "Exhibit J."

(7) Resolution of the city council of Atlanta passed and adopted January 1, 1869, copy of which is hereto attached marked "Exhibit K."

(8) Ordinance of City of Atlanta granting the right to merge certain lines of railway in the City of Atlanta, dated December 7, 1891, copy of which is hereto attached marked "Exhibit L."

(9) An ordinance of the City of Atlanta allowing the Atlanta Railway & Power Company and certain others to transfer property and franchises to the Georgia Railway & Electric Company, adopted January 27, 1902, copy of which has already been attached marked "Ex. A."

(10) An ordinance of the City of Atlanta dated March 11, 1912, copy of which is attached marked "Exhibit M."

51. Petition avers that the above sub-paragraphs numbers 1 to 1[illegible] inclusive, together with the franchise ordinances in the nature of contracts and the ordinances seeking to fix the fares charged, heretofore in this petition set out, was all the evidence before the commission and includes all the evidence that can be produced before
111 the commission dealing with their jurisdiction to fix and approve the street railroad fares sought by your petitioner; and your peitioner alleges that under said evidence the commission has jurisdiction and authority to consider the petition of the Georgia Railway & Power Company and to grant the increased street railroad fares sought, provided they find, as they did, that the same are just and reasonable.

52. Petitioner shows that after hearing the evidence and argument on said petition, the railroad commission finally on the 14th day of August, 1918, passed final judgment thereon, in which various changes were made in the charges, rates and fares of petitioner as to gas, light and power, resulting in the main in an increase of rates, charges and fares over said rates, charges and fares in force prior to the filing of the petition above referred to, but declined to grant the increase of street railway fares sought for the sole reason that under the proviso of the act of 1907, they did not have jurisdiction to fix street railroad fares in the cities of Atlanta, Edgewood, Decatur, East Point and College Park, and while the commission did not grant the prayer of petitioner as to street railroad fares because of lack of jurisdiction as in just stated, the commission did find that as a matter of fact the street railroad fares in the cities aforesaid were too low and that in fairness and justice they ought to be increased to six cents instead of five, and that if the cities concerned would change their ordinances they would at once act and allow a six cent fare instead of five cents. A copy of the official order of the commission is hereto attached marked "Exhibit N."

53. Said commission erred in declining to take jurisdiction in the matter of approving and fixing just and reasonable street railroad fares as prayed for by your petitioner. (1) Because there
112 are no contracts, valid or otherwise, between the city of Atlanta and your petitioner, fixing the street railroad fares, nor was there in existence in 1907 an ordinance, valid or otherwise, passed by the city of Atlanta fixing street railroad fares, and if there existed at said time any such contracts or ordinances, the same were invalid (*a*) because the city of Atlanta lacks the charter power to make any such contracts or ordinances and (*b*) because if the city of Atlanta had charter power to make said contracts and enact said ordinances they would be void because they violate Article 4, Section 2, paragraph 1, of the constitution of the State of Georgia, conferring upon the general assembly alone the power of regulating passenger tariffs, preventing unjust discrimination, and fixing reasonable and just rates. (2) The claimed contracts between petitioner and the towns of Edgewood and East Point are not valid contracts because (*a*) the said towns lack the charter power to make such contracts

nd (*b*) because if the towns of Edgewood and East Point had harter power to make said contracts they would be void because in olation of Article 4, Section 2, Paragraph 1, of the constitution of he State of Georgia, which restricts the power of regulating pas-nger tariffs and preventing discrimination to the general assembly f this State, and (*c*) because under the words of the claimed con-racts the fares in the two said towns are not fixed, but are to vary ith the rates in the city of Atlanta, and the commissioners in fix-ng rates in the city of Atlanta would lawfully automatically fix rates n the two said towns. (3) The claimed contracts in the towns of Decatur and College Park are invalid (*a*) because each of said towns acks the charter power to make such contracts, and (*b*) because if aid towns claimed the charter power to make said contracts it is in iolation of articles 4, section 2, paragraph 1, of the constitution of this State, which restricts to the general assembly the power
13 to make rates and prevent discrimination on railroads. (4) Even if they are valid contracts as to one or more of the municipalities upon whose streets petitioner has lines, the existence f such valid contracts would not prevent the railroad commission rom exercising its jurisdiction to fix street railroad fares of petitioner n all cases other than cases covered by said valid contracts. It is within the jurisdiction and the duty of the commission to fix just nd reasonable street railroad fares except in cases covered by valid existing laws and ordinances passed and enacted prior to 1907. (5) If there are in the cities whose streets are occupied by petitioner, valid existing contracts, the act of the commissioners in fixing and approving just and reasonable rates would not, under the laws be n impairment of such contracts. Under the constitution of this State, article 4, section 2, paragraph 1, the general assembly alone an either by contract or laws, fix fares for street railway companies, nd if cities having street railway corporations can contract with eference to fares, the above part of the constitution enters into and ecomes a part of such contracts, and such contracts, whether the egislature acts directly or through commissioners, are not impaired, ut the provisions of such contracts are, in fact, thereby carried out. (6) The proviso in the act of 1907, is void because in violation of he constitution of the State of Georgia, set out in the Civil Code in ections 6391 and 6358, in that it does not have uniform operation hroughout the State, and is not impartial and complete as required y said constitution.

54. Your petitioner shows that the refusal of the railroad com-nission to take jurisdiction of the petition of the Georgia Railway t Power Company, seeking to have the commission to approve the street railway rates and fares attached to its petition, or to fix
14 other just and reasonable rates to be charged by your peti-tioner on its street railways, leaves petitioner remediless, un-ess this Honorable court will grant the right of mandamus, directing he said railroad commission to take jurisdiction of the Georgia Railway & Power Company as to the matter of approving the said ates sought by it in lieu thereof in fixing other just rates.

55. The suggestion of the commission that the city council of the cities claiming to have contracts modify the same and that upon such modification the commission would then act and approve the six cent fare sought by petitioner has been rejected by the city council of the city of Atlanta, as will be seen by a report of a committee to the body, and its resolution which is hereto the court shows, marked Exhibit "P." Upon information and belief petitioner alleges that the other city councils will reject the suggestion of the commission.

Wherefore, your petitioner names the railroad commission of Ga and C. M. Candler, George Hillyer, Paul B. Trammell, John T. Boi feuillet and J. A. Perry as defendants hereto, and respectfully pray

(1) That this court issue mandamus nisi, directed to the said commissioners, C. M. Candler, George Hillyer, Paul B. Trammell, John T. Boifeuillet and J. A. Perry, requiring them to show cause at the time and place to be designated by the court, not less than ten days nor more than thirty days, why a mandamus should not be issued against them and each of them, requiring them to take jurisdiction of the petition of Georgia Railway & Power Company, a copy of which is hereto attached, marked "Exhibit B" and to consider and adjudge the same, and to approve or disapprove the street car fares therein sought, or in lieu thereof to fix such other fares and
115 rates as may seem just and reasonable to said railroad commissioners, and in the exercise of its jurisdiction in said cause to pass final judgment upon said petition in accordance with what may be equitable and just in the premises.

(2) That on the hearing of the mandamus that it be made absolute and defendants be required to take jurisdiction of the petition of Georgia Railway & Power Company a copy of which is hereto attached, marked "Exhibit B" and to consider and adjudge the same and to approve or disapprove the street car fares therein sought, or in lieu thereof to fix such other fares and rates as may seem just and reasonable to said railroad commissioners and in the exercise of its jurisdiction to pass final judgment upon said petition as to street railroad fares, in accordance with what may be equitable and just in the premises.

(3) That process may issue directed to said defendants requiring them to be and appear at the time and place designated by the court to answer this complaint, and abide by the full orders of the court. This 22 day of August, 1919.

KING AND SPALDING,
C. T., L. C. &
J. L. HOPKINS,
BREWSTER, HOWELL & HEYMAN,
COLQUITT & CONYERS,
ROSSER, SLATON, PHILLIPS AND
HOPKINS,
Pl'ff's Attys.

TATE OF GEORGIA,
County of Fulton:

Before the undersigned personally appeared Preston S. Arkwright, ho upon oath says that he is the president of the Georgia Railway & ower Company, the petitioner named in the foregoing petition; that he has read said petition and knows the contents thereof; and
16 that the facts therein are just and true as they stand stated.
PRESTON S. ARKWRIGHT.

Sworn to and subscribed before me, this 23 day of August, 1918.
[SEAL.]
L. D. HINTON,
N. P. State at Large, Georgia.

(*Order.*)

The petition of the plaintiff in the above entitled cause has been ead and considered, and the same is hereby sanctioned and ordered led, and defendants served, and it is further ordered that the de- endants named, to wit, C. M. Candler, George Hillyer, Paul B. Trammell, John T. Boifeuillet and J. A. Perry, be and appear before ne at the court house in the city of Atlanta, Ga., on the 7th day of eptember, 1918, at nine and one-half o'clock a. m., or as soon there- fter as can be heard, then and there to show cause why mandamus bsolute should not be issued against them as prayed for in the peti- ion.

Dated and signed this 23d day of August, 1918.
GEO. L. BELL,
Judge S. C A. C.

EXHIBIT "A."

Ordinance Allowing the Atlanta Railway and Power Company, Atlanta Rapid Transit Company, Georgia Electric Light Company, and Atlanta Steam Company to Transfer Property and Franchises to Georgia Railway and Electric Company and Franchise Granted Georgia Railway and Electric Company.

Consolidating Ordinance.

By Councilman Howell:

An Ordinance to Provide for the Consolidation of the Atlanta Rail- way and Power Company, Atlanta Rapid Transit Company, Georgia Electric Light Company, and Atlanta Steam Com-
17 pany, and for Other Purposes.

Section 1. The Mayor and General Council of the City of Atlanta lo hereby ordain. That the authority, right, permission and consent re hereby granted to the Atlanta Railway and Power Company, tlanta Rapid Transit Company, Georgia Electric Light Company nd Atlanta Steam Company, and the successors and assigns of each,

to consolidate, unite and merge the said companies, or any of them and the properties, business, stations, lines, tracks, pipes, cables, wires, conduits, rights, privileges and franchises, or any part thereof according to such plan at such time or times, and upon such terms as the companies entering into such consolidation may desire or deem to their best interest. In order to fully and effectually accomplish such consolidation, authority, power and consent are hereby granted to each of said companies, its successors and assigns, to sell, dispose of, lease, assign, set over, transfer and convey all or any part of its business, property, stations, lines, poles, pipes, conduits, tracks, rights, privileges and franchises, and the said rights, privileges and franchises so assigned, set over, transferred or conveyed are hereby regranted and reconsented by the city of Atlanta, to the persons or company to which the same are assigned, transferred or conveyed, their and its heirs, successors and assigns, upon the same terms and conditions contained in said grants, except as the same may be herein modified.

Sec. 2. Be it further ordained, That the said consolidated company, its successors and assigns, shall have, and it and they are hereby granted the right, power, consent and permission to hold, enjoy, use, equip and operate the street railway lines, tracks, rights and privileges, so acquired upon the terms and conditions as to each of said lines contained in the grant under which the said line was constructed, the terms and conditions of each remaining the same as to the line constructed under it, except as such terms and conditions may be herein modified.

118

Sec. 3. Be it further ordained, That the said consolidated company, its successors and assigns, shall have, and it and they are hereby granted the right, power, consent and permission to hold, enjoy, use, equip and operate the electric light, heat and power conduits, ducts, wires, conductors, cables, insulators, manholes, service boxes, services, poles appliances and connections, and the rights and privileges of the constituent companies so acquired by the consolidating company, upon the terms and conditions contained in the grants to the Georgia Electric Light Company, approved December 23, 1899, and those adopted April 6, 1892, and December 3, 1895, and all the terms and conditions contained in the electric light franchise granted to the Atlanta Railway & Power Company approved April 22, 1901, different from or not contained in the said grants to the Georgia Electric Light Company, be, and the same are hereby repealed. And right and permission are hereby granted to said consolidated company, its successors and assigns, to open the streets, avenues, alleys and public places, or such of them as it or they may from time to time deem necessary or proper within the close or inner district of the fire limits of the city of Atlanta, and to lay, maintain and use therein conduits, ducts, wires, conductors, cables, insulators, manholes, service boxes, services, and all necessary appliances and connections, and to use the streets, alleys and public places as from time to time it may be deemed proper or necessary without the present inner fire limits for the erection and maintenance

poles and the stringing of wires, cables, insulators, and all necessary appliances and connections for the business and purpose of conveying, using, conducting, supplying and distributing electricity for light, heat or power, for public or private use, on the terms and conditions contained in said grants hereinbefore ferred to as having been heretofore made to the Georgia Electric ght Company. And to re-enter upon such streets, alleys, avenues d public places from time to time as may be necessary for the exnsion, operation, repair and removal of the same, or any portion ereof.

Sec. 4. Be it further ordained, That the Atlanta Railway and wer Company, its successors and assigns, are hereby relieved and leased from completing the works, structures and conduits required the ordinance approved April 22, 1901, granting it an electric ht franchise and of liability under said ordinance, is hereby canlled, and the principal and surety thereon released and discharged om all liability.

Sec. 5. Be it further ordained, That the consolidated company, its ccessors and assigns, shall have, and it and they are hereby granted e right, power, consent and permission to hold, enjoy, use equip, aintain and operate the steam pipes, branches, cut offs, manholes, nnections and appliances and the rights and privileges connected th the steam business and property so acquired, upon the same rms and conditions contained in the grant made to E. Woodruff d others, their successors and assigns, approved Feby. 26, 1900, cept the provisions requiring a payment to the city of a percentage portion of the gross receipts of such business, which provision is reby repealed.

Sec. 6. Be it further ordained, That the general ordinance, on the bject of street railways and their operation and control, approved ugust 22, 1899, and contained in the City Code, Section 1351-*a* to 1351-*m*, both inclusive be and the same are, hereby repealed.

It is also ordained and agreed that said consolidated company, its successors and assigns, shall be allowed to haul and convey eight and property upon and over its railways and lines in the city Atlanta subject to such reasonable rules and regulations as may om time to time be adopted by the Mayor and General Council.

Sec. 7. Be it further ordained, That any and all provisions conined in any general ordinance of the city or in any section of the y code, or in any of the grants or franchises heretofore made to now owned by the Atlanta Railway & Power Company, the Atnta Rapid Transit Company, the Georgia Electric Light Company the Atlanta Steam Company, preventing or restricting a sale, ansfer, disposition or assignment of any part of their property or anchise, or providing for any payment upon gross receipts, or forbidding, restricting, limiting or placing penalties upon consolidaon, merger, or sale of or by any of said companies, be, and the same e, hereby repealed.

Sec. 8. The City of Atlanta hereby reserves the right to conde
such portions of the lines of the street railways now held, owned
operated by the Atlanta Rapid Transit Company, whether then
and owned by the Atlanta Rapid Transit Company, its succes
or assigns, or merged into the consolidated company, not exceed
five blocks at any one place, as may be necessary, in the judgm
of the Mayor and General Council, for allowing other street
companies to enter the central portion of the city upon payment
just compensation to the railway company whose tracks are so
demned, whether held by the Rapid Transit Company or the
solidated company, its successors or assigns.

The City of Atlanta hereby further reserves the right to conde
such portions of the lines of street railway now held, ow
121 and operated by the Atlanta Railway and Power Compa
whether then held and owned by the Atlanta Railway
Power Company, its successors or assigns, or merged into the cons
dated company, not exceeding five blocks, as may be necessary
the allowing of other street car companies to enter the central
tion of the city, upon payment of just compensation to said
pany, its successors and assigns.

The city further reserves the right to allow other railway compa
to pass over Whitehall Street viaduct and the tracks constructed
said street and viaduct by the city, and in the event said city
permit any other company to use said viaduct and tracks ther
the same shall be upon the condition that the company so using
be required to pay at least an equal amount to that required to
paid by the Collins Park and Belt Railroad Company or
equivalent of said sum in rental to the City of Atlanta or 5
centum per annum on fifty thousand dollars, said sums collected
the use of said viaduct to be paid to the City of Atlanta for its

The city further reserves the right as against the Atlanta Ra
Transit Company to allow other railway companies to pass over
use whatever rights, powers, and tracks the Atlanta Rapid Tra
Company has on Peachtree Street from Auburn Avenue south,
Whitehall Street from Alabama Street south, to Mitchell Street,
use and purpose to be used by other such companies in order
reach Whitehall street viaduct, such permission, however to pres
the said Atlanta Rapid Transit Company, its successors and assi
the use of said viaduct and streets, as and for the period hereto
granted, so long as it complies with terms of grants held by th
and also to preserve said consolidated company the use of
122 viaduct granted and the rights to said streets hereto
granted to the Atlanta Railway & Power Company; such
however, not to be exclusive. In the event said city shall permit
other company to use the rights, powers and tracks of the Atla
Rapid Transit Company, the same shall be upon the condition t
the company so using shall pay a proper sum for the use ther
the amount to be fixed by the Mayor and General Council. T
sum to be paid to the Atlanta Rapid Transit Company, its succes
and assigns, for its use and their use.

The reservation of the right to allow other companies to use

ghts, powers and tracks of the Atlanta Rapid Transit Company on achtree Street from Auburn Avenue south, and on Whitehall reet from Alabama Street south, to Mitchell Street, is without ejudice to the rights and interest which the Atlanta Railway & wer Company has in said tracks, whether such rights and interests e then held by the Atlanta Railway and Power Company, its ccessors or assigns or merged into the consolidated company, but to such tracks the rights of each of said companies now owning having an interest therein are to stand and be treated as they now e in the separate companies just as if they had not been con-idated, whether such rights are then held by said separate com-nies, or their successors or assigns or merged in the consolidated mpany.

It is intended hereby that the rights of condemnation herein re-rved shall not be in addition to such rights as have been heretofore served in the separate franchise, but in lieu thereof.

Sec. 9. Be it further ordained, That said consolidated company all have the right to operate its entire system and all of the cars across the Whitehall Street viaduct as a part of its system 23 without payment of any sum, should such consolidated company acquire the tracks and privileges of the Atlanta Rapid ransit Company, the sum of $50,000 heretofore paid by the Atlanta apid Transit Company for the privilege of operating cars across id viaduct being accepted as full payment for such privileges to id consolidated company, nor shall any additional sum be required be paid by said consolidated company for the privilege of operat-g upon or across any other bridge or viaduct in the city now built, her than the sum now being paid by the constituent company on ch bridge, the payment now being required of the constituent mpany being in full for the privilege to the consolidated company.

Sec. 10. Be it further ordained. That said consolidated com-ny, its successors and assigns, are hereby granted the right and per-ission to physically connect, merge and consolidate the said prop-rties which it may acquire, wherever it desires, and to construct and y such double tracks, curves, switches, connections, wires, tracks, c., as it may from time to time deem proper for this purpose, or r the purpose of rendering efficient service, and to straighten out e kinks in its tracks and lines, it being the intention hereof to allow e full and complete consolidation of the companies heretofore ferred to and their properties whereby the freest possible use and rofit thereof may result to said consolidated company and so that id company may consolidate, control and operate all of said prop-rties as it may desire, subject only to proper police laws and re-rictions.

Sec. 11. Be it further ordained. That the rights, privileges and rants herein contained are made for the consideration and upon e terms and condition- following, to wit:

124 (*a*) Said consolidated company shall within thirty d
following the fact of such consolidation pay into the trea
of the city of Atlanta the sum of $50,000.

(*b*) Said consolidated company, its successors, and assigns, sh
also be bound to pay on or before the first day of February of e
year, beginning with the year 1903, into the treasury of the c
of Atanta, the following percentages upon the gross amounts
ceived by said company, its successors and assigns, from all
fares and tolls for passengers and property, the sale or supply
electric current for light, heat and power, and the sale or supply
steam heat, whether such receipts be earned within or without
limits of the city of Atlanta, to wit: for the first three years,
ginning with 1902, one per cent (1 per cent.) per annum of s
receipts; for the following twenty years, beginning with the y
1905, 2 per cent. per annum of said receipts, and thereafter 3
cent. per annum of said receipts.

(*c*) The Mayor and General Council shall appoint or provide
a committee or board to make examination of the books and rec
of said company to ascertain the amount of its gross receipts, a
make report thereof to the general council prior to February 1st
each year, and said company shall also on or before the first day
February file a statement of said gross receipts sworn to by an of
of the company. Said statement and report shall cover the calen
year; that is from January 1st to December 31st, of the year pre
ing each February at which said reports and statements are ma

(*d*) The payment of percentage of gross receipts above provi
for shall be in lieu of specific, occupation, license, excise spe
franchise taxes not included in ad valorem taxes or char
125 by the city of Atlanta, and in full of all money demands
charges whatever, except ad valorem taxes, paving charges
now provided by law, and bridge rentals and whatever shall be
any time required or enacted on any of said accounts, or any acco
other than ad valorem taxes, paving charges and bridge rentals, sh
operate to reduce to that extent the amounts due from the perce
ages above provided for.

(*e*) The said consolidated company shall, for the purpose of g
ing one continuous ride inside the city of Atlanta from a point
one of its lines to a point on another of its lines, which, however
does not carry the passenger on a parallel line or in the same gene
direction from which he came, grant one transfer ticket on the p
ment of one full fare, provided such transfer is requested at the ti
of payment of the fare, provided the company shall have the ri
to make such reasonable rules and regulations as to limit the ti
in which they are used, so that they will be available only for
first connecting car, and as to any other matters necessary or pro
to protect said company from imposition or abuse or assignment
such transfers, and to avoid liability in damages from mistakes
employes in regard to said transfers.

Sec. 12. Be it further ordained, That the terms of this ordinance
all be accepted by said consolidated company upon its formation
as to bind it to the terms thereof, and the provisions of this
dinance shall not be effective until so accepted. It is further under-
ood and intended hereby that whenever the name "Consolidated
ompany" is used herein it means that company into which the
ompanies named above, or any two or more of them are consoli-
ated, merged, or united, whether one of the existing companies of
new company: provided, that no benefit hereunder and no repeal
of any ordinance or part thereof made, hereby shall accrue
26 or apply to any of said companies not included in said con-
solidated company, but as to any company which does not
me into the consolidation provided for hereby, the city shall and
es preserve all said ordinances and all powers and rights which the
ty now has or may hereafter acquire.

Sec. 13. Be it further ordained, That should the City of Atlanta,
er at any time construct, lease, purchase, acquire, own, hold, use
operate an electric lighting or power plant, then the percentage
reinbefore provided to be paid by said consolidated company shall
ate as to the gross receipts derived from the business of supplying
ectric current and shall forever after be uncollectible, and the city
Atlanta shall from then on cease to be entitled to any percentage
other sums whatever, on account of the business of supplying
ectric current of said consolidated company, its successors and
signs.

Sec. 14. Be it further ordained, That all laws, ordinances, resolu-
ons, or parts thereof, as well as provisions in other grants and
anchises, in conflict herewith be, and the same are, hereby repealed.

Adopted January 27, 1902.
Concurred in January 29, 1902.
Approved February 8, 1902.

L. MIMS,
Mayor.

Amending Ordinance.

By Council- Howell:

Sec. 1. Be it ordained by the Mayor and General Council. That
e ordinance approved February 8, 1902, entitled "An Ordinance
provide for the consolidation of the Atlanta Railway and Power
Company, Atlanta Rapid Transit Company, Georgia Electric
27 Light Company and Atlanta Steam Company, and for other
purposes" be and the same is hereby amended as follows:

1st. By striking in lines 6, 7 and 8 of section 2, of said ordinance,
e following words: "Was constructed the terms and conditions of
ch remaining the same as to the lines constructed under it," and
sert in lieu thereof the following words: "is now held and
perated."

2nd. By inserting in section 10 of said ordinance between
words "Lines" and "It" in the eighth line of said section, the follo
ing words: "The right to construct and lay tracks granted here
is intended to be confined to the streets within the present system
the company, and is not intended to grant the right to constru
new lines or build tracks upon streets or sections of streets not n
occupied by street railways, without the further consent of the Ma
and General Council."

Sec. 2. Be it further ordained. That the said ordinance abo
referred to, as amended as above set out, be, and the same is, here
re-enacted.

Adopted February 8, 1902.
Concurred in February 8, 1902.
Approved February 8, 1902.

L. MIMS,
Mayor.

Acceptance of Ordinance by Georgia Railway and Electric Compa

To the Mayor and General Council of the City of Atlanta:

In accordance with the provisions of section 12 of the ordinan
to provide for the consolidation of the Atlanta Railway and Pow
Company, Georgia Electric Light Company, Atlanta Rapid Tran
Company and Atlanta Steam Company, and for other p
128 poses, adopted by your Honorable body and approved by
mayor on February 8, 1902, Georgia Railway and Elect
Company, a corporation duly organized under the laws of the St
of Georgia, being the consolidated company referred to in said o
nance, into which two or more of the said constituent compan
have been consolidated in accordance with the terms of said o
nance, and into which it is contemplated by the officers of said co
pany that all of said constituent companies named in said ordina
will be eventually merged, does hereby accept the terms of the s
ordinance above referred to and also the terms of the amendment
said ordinance adopted by your Honorable body on February
1902, and also approved by the mayor on February 8, 1902; and
said Georgia Railway and Electric Company does hereby agree a
bind itself to the terms and provisions of the said ordinance
amended by the said amending ordinance above referred to.

Enclosed herewith is a certified check to the order of the City
Atlanta for the sum of fifty thousand ($50,000) dollars, being
sum required to be paid by this company to the city by sub-divis
A of Section 11 of the ordinance above referred to, as part of the
sideration by this company to the City of Atlanta, for the rig
consents, and privileges conferred upon this company, its succes
and assigns, by said ordinance.

Attached hereto are certified copies of the resolution of the sto
holders and of the resolution of the board of directors of this co
pany authorizing this acceptance to be made.

Witness the corporate name and corporate seal of the Georgia Railway and Electric Company hereunto affixed by P. S. Arkwright its president, and S. J. Bradley, secretary, hereunto duly authorized, this February 20, 1902.

GEORGIA RAILWAY AND ELECTRIC COMPANY,
By P. S. ARKWRIGHT,
President.

S. J. BRADLEY,
Secretary.

129 EXHIBIT "B."

To the Honorable Railroad Commission of the State of Georgia:

The petition of the Georgia Railway & Power Company respectfully shows:

1. That it is a corporation under the laws of the State of Ga., and that its charter and history of its organization, and the amount of the issue of its securities are all matters of record in the office of this Honorable Commission, and are here referred to for the purpose of this petition.

2. That petitioner is conducting the business of street car service to the public in the cities of Atlanta, Kirkwood, Decatur, East Point, College Park and Hapeville, also in the City of Gainesville, Ga., also extensive suburban street railway business in the counties of Fulton, De Kalb and Hall.

3. That it is also engaged in serving the public with electric current for light, heat and power in this same territory, and generally throughout the northern part of the State of Ga., embracing many other cities, towns, suburban territory, and serving a great number of industrial and commercial plants and private citizens.

4. That it is engaged in serving the public in the city of Decatur with gas, and that it owns the entire capital stock of the Atlanta Gas Light Company, which serves the cities of Atlanta, East Point, College Park and contiguous territory with illuminating and fuel gas.

5. That its electric current is generated largely by water power, and also to a considerable extent by steam plants, and that it has a distributing system and tower line which reaches from its plant at Tallulah Falls, and from the cities of Elberton and Hartwell, on the east to the cities of Newnan, Carrollton and Cedartown on the west, Rome and Dalton on the north; Social Circle and Monroe on the south.

130 6. That in said territory it serves directly itself or by furnishing municipalities and local companies, the electric current for forty-six cities and towns, and also serve a large number

of mills, manuacturing plants and industries operating therein, a which use same both for light and power.

7. That embraced in said service is the furnishing of electric c rent for the pumping of water to various of the municipalities in a territory, and also for furnishing light and power to various publ institutions, hospitals, United States army camps, cantonments, a to almost all of the public institutions located therein.

8. That it is furnishing electric current for power and light to large number of cotton mills and other industrial plants of ma and various kinds, which are engaged largely, and some of the e clusively, in furnishing materials to the National Government f the purpose of carrying on successfully the conduct of the war.

9. That your petitioner is confronted by a grave emergency ar ing out of the general conditions produced by the war, and whi are affecting in a large measure the entire country, and becau thereof it is imperatively necessary that it have prompt and effect relief in order to enable it to continue its service of the public a the discharge of the its duties generally under its charter a franchise.

10. That these conditions produced by the war have brou about an enormous increase in the cost of everything that goes produce the service that petitioner is rendering the public, t wages of its employes have been largely increased since 1916, a that as late as the first of April, 1918, a further increase was ma and petitioners can clearly see that it will be necessary to m other and additional increases in order to retain a sufficie
131 force to operate its properties, and even with these increa it is exceedingly difficult to secure the employees necess for operation. That the price of material of all kinds has t mendously increased, and the tendency still is to further increa so that for every article, it has to purchase it is paying war pri ranging from fifty to four hundred per cent above the pre-w prices.

11. That taxes have largely increased, and the rates of inter on all moneys borrowed have largely increased.

12. That the entire output of petitioner's electric power is tak up and it cannot now enter into a contract to furnish any new terprises or industries, or to supply any amount of current ot than that already contracted until further development of its wa power takes place.

13. That in order to meet this situation and to have the co pany in position to supply the territory with additional electric c rent to take care of its growth and development, and to meet t exigencies of the war, petitioner, early in the year 1917, perfec arrangements for the further development of its water powers in t territory around Tallulah Falls, and to this end perfected its fina cial arrangements and let the contracts and entered upon the s

velopment. That this plan embraced the expenditure of about
ve million ($5,000,000.00) dollars, as shown by the records of
our Honorable Commission, and of this sum said plan involved
e furnissing of one million and five hundred thousand ($1,500,-
00.00) dollars by your petitioner from its earning- during the
eriod of construction, that at the time of said contract this was a
asonable arrangement for your petitioner to make and it has
od reason to contract for the furnishing of such sum from its
income, but that shortly thereafter war condtiions developed
32 which render it impossible for petitioner to furnish the same
from its receipts and revenues as now allowed to be charged
it on account of the large increases in cost as aforesaid.

14. That the said development, as shown by the records of your
onorable Commission, would very largely increase the capacity
petitioner to serve the public throughout said territory, and by
eans of such service to further the aims and purposes of the nation
carrying on the war, and it is very desirable from every view-
int that it should be allowed to make the same as being in the
terest of the public. That it will be impossible for petitioner to
ake the said improvements and the same will have to be stopped
nless the emergency that has arisen is relieved by an increase in
income; that it has contracts for the machinery placed, as to some
which it has been forced to postpone the delivery on account of
is emergency, thereby deferring the completion of said work for
least a year beyond the date originally contemplated.

15. That petitioner's rates are on file with this Honorable Com-
ission, and the history thereof is disclosed by its records; that
ere has never been an increase of rates in any petitioner's rates for
ectric lighting, for street car and suburban fares, or gas service;
at all changes have been decreases.

16. That it is now required to grant transfers on all fares paid
its street car and suburban lines.

17. That said rates for the service of electric current and street
r fares and gas not on file with this Honorable Commission are
holly inadequate and insufficient to furnish sufficient incomes to
operly care for and preserve its properties and adequately and effi-
ntly serve the public.

18. That the rates are so low as to be inadequate and insufficient
to pay the costs of the service and yield a reasonable return
33 on the investment necessary to render the said service.

19. That petitioner has never paid any dividend on either its
mmon or second preferred stock; that it is in arrears on cumula-
e dividends due on its first preferred stock to the extent of seven-
n per cent and petitioner respectfully submits that it is entitled
charge sufficient rates and fares to enable it to pay a fair return
on its investment.

20. That a sound administration of petitioner's properties r
quires that a depreciation reserve should be set aside sufficient
fully replace the properties and maintain them and off-set all los
occurring from wear and tear, obsolescence and supercession an
other forms of depreciation; that its incomes are insufficient to e
able it to pay the necessary expenses of operation, interest charg
and taxes and leave sufficient sum to cover this depreciation mu
less pay any return upon the investment, or to its stockholders.

21. That it is directly and immediately in the interest of th
public locally, and throughout the entire territory served by it, an
to the national welfare, that petitioner be granted an increase in i
rates in order to keep it a going concern and enable it to proper
and effectively serve the public, and that petitioner is ready, an
will disclose at the hearing, all facts, and give all information an
details desired by the Honorable Commission.

22. The conditions confronting your petitioner are gener
throughout the United States and affect substantially all business an
industries Privately controlled business and individuals have m
increased costs by increases in the prices of their products and se
ices. It is essential that the prices charged by public utili
134 for their services must likewise be increased to meet the i
creased costs of material and labor. This has been recognize
in many of the cities of the United States and by numbers of th
State Public Utility Commissions and the local regulatory bodi
In many of the cities of the United States the rates for gas, electr
service and street railway fares have already been increased, an
applications are pending for increases in other cases. From the mo
complete information which your petitioner has been able to gathe
there have recently been granted increases in four hundred an
thirty (430) cases.

Within the past few months the critical situation confronti
public utilities in the United States, brought on by abnormal w
time conditions, was presented to the authorities in Washingto
After a thorough investigation of the matter, the President of th
United States, the Secretary of the Treasury, and the Comptrol
of the Currency have all publicly expressed their concern as to th
situation, and have urged in the interest of the national program f
carrying on the war, that the State and local authorities take su
steps as may be necessary to assist the utilities in preserving the
credit and their services. Something more than the preservation
the utilities is at stake. The service which in ordinary times wo
of local convenience have become in this period of stress a nationa
necessity, and if the services of the public utilities throughout th
country should stop, the whole war program would instantly co
lapse. It follows that in so far as the condition of the public utiliti
is impaired the war program of the United States is proportionate
delayed and interfered with. What applies to the country as a
whole in considering the public utilities as a whole applies likewi

to the services rendered by your petitioner in the territory
135 served by it in the city of Atlanta and the northern part of the State of Ga. As stated by the President of the United States "It is essential that these utilities should be maintained at their maximum efficiency and that everything reasonably possible should be done with that end in view."

23. Under the unusual war conditions which have prevailed for more than a year, the directors in charge of the property of your petitioner have earnestly, patiently and persistently endeavored to manage its affairs so as to enable your petitioner to furnish usual facilities at existing rates.

They realize that they can no longer effectively discharge the obligations of the company, either to its owners or to the public without a substantial decrease in the cost of labor and material, or a corresponding increase in the price for which its service may be sold.

Neither your Honorable Board nor your petitioner's board of directors can contol the price of either material or labor, and the advanced cost of both these essential commodities makes the continued conduct of your petitioner's business, as a going concern furnishing public service for reasonable compensation, impossible under the present scale of rates.

Your petitioner's directors have, therefore, formulated the table of rates attached to this petition as the only recourse that will enable the continued discharge of their responsibility to the public and to your petitioner as a public service corporation.

And your petitioner prays the approval of this Honorable Commission to said table of rates so formulated in order that the same may become effective.

Respectfully submitted,

GEORGIA RAILWAY AND POWER COMPANY,

By —— ——,
President.

Atlanta, Georgia, April 15, 1918.

136 Georgia Railway & Power Company.

Rates Within the City Limits of Atlanta, Georgia.

In connection with all electric light, power and gas rates:

The customer himself to supply at his own cost the original installation of electric lamps and all renewals.

All gratuitous service to be dispensed with.

Georgia Railway & Power Company.

Lighting Rates Within the City Limits of Atlanta, Georgia, on Monthly Basis.

Residence Lighting Rates.

10¢ per K. W. H. for the first 150 K. W. H. used per month, ex- cess at 6¢ per K. W. H. monthly minimum guarantee $1.11. Net subject to 10¢ discount for prompt payment.

Commercial Lighting Rates.

1 to 50-50 watt equivalents				150 K. W. H. at 10¢ per K. W. H. ex. 6¢ K. W. H.		
51	60	"	"	175		
1	70	"	"	200		
71	75	"	"	225		
76	85	"	"	250		
86	90	"	"	275		
91	100	"	"	300		
101	110	"	"	326	Ditto.	Ditto.
111	125	"	"	350		
126	150	"	"	400		
151	175	"	"	450		
176	200	"	"	500		
201	225	"	"	550		
226	250	"	"	600		
231	300	"	"	650		
301	350	"	"	700		
351	400	"	"	800		
401	500	"	"	900		
501	600	"	"	925	K. W. H. at 10¢	925 K. W. H. at 6¢; ex. 4¢ K. W. H.
601	700	"	"	945	945	
701	800	"	"	965	965	
801	900	"	"	985	985	
901	1,000	"	"	1,000	1,000	Ditto.

Above 1,000-50 watt equivalent the rate is one K. W. H. per 50 watt equivalent at 10¢ per K. W. H. One K. W. H. per 50 watt equivalent at 6¢ per K. W. H. Excess at 3¢ per K. W. H.

Monthly minimum $1.11. Regular minimum $11.11 per 50 watt equivalent. Rate and minimum subject to 10% discount for prompt payment.

Georgia Railway and Power Company.

Retail Power Rates Within the City Limits, Atlanta, Ga., on Monthly Basis.

1 H. P. connected	First 75 K. W. H.	6¢ per K. W. H.; Excess 3¢ per K. W. H.	
2	130		
3	185		
4	230		
5	275		
6	325	Ditto.	Ditto.
7	360		
8	400		
9	435		
10	465	Ditto.	Excess 2¢ per K. W. H.
12	500		
15	550		
20	650		
25	700		
30	750		
35	800		
40	850		
50	925		
60	940		
70	955		
80	970		
90	985	Ditto.	Ditto.

Above 100 H. P. the primary and secondary K. W. H. per month are 10 cts. per H. P. connected, the tertiary rate of $1.5¢ per K. W. H. applies on all current used in excess of the primary and secondary K. W. H.

Monthly Minimum Guarantee, Smallest $1.11.

Over 2 H. P. the guarantee is $0.55 per H. P. connected.

Rate and minimum subject to 10% discount for prompt payment.

Georgia Railway and Power Company.

Atlanta, Ga.

Ceiling Fan Minimums.

Fans on power rates where no motors are used carry the following minimum per month:

1 fan	$2.22	gross
2 fans	3.33	"
3 "	3.83	"
4 "	4.44	"
5 "	5.00	"
6 "	5.55	"
7 "	6.11	"

138

8 fans	6.66	gross
9 "	7.22	"
10 "	7.77	"
11 "	8.33	"
12 "	8.86	"
13 "	9.44	"
14 "	9.99	"
15 "	10.55	"
16 "	11.11	"
17 "	11.81	"
18 "	12.22	"
19 "	12.77	"
20 "	13.20	"

Less 10% discount for prompt payment.

Georgia Railway and Power Company.

Residential Cooking and Heating Rate Within City Limits of Atlanta.

Monthly minimum, $2.22.
K. W. hour rate, 5 cts. per K. W. hour.
Less 10% for prompt payment.

Outside City Limits of Atlanta.

Monthly minimum, $2.22.
K. W. hour rate, 6 cts. per K. W. Hour.
Less 10% for prompt payment.
(Use regular standard retain power application.)

Georgia Railway and Power Company.

Residence Lighting Rates in Suburban Districts Not Incorporated.

Just Outside of the City Limits of Atlanta, Ga., Within One-half Mile of Atlanta City Limits.

Primary rate, 10 cts. per K. W. H.
Monthly minimum, $1.66.
Less 10 cts. for prompt payment.

More Than One-half Mile of Atlanta City Limits.

Primary rate, 10 cts. per K. W. H.
Monthly minimum, $2.22.
Less 10% for prompt payment.

Power Rates in Suburban Districts Not Incorporated Just Outside of the City Limits of Atlanta.

Primary power rate 7 cts. per K. W. H. gross.
Secondary power rate 3 cts. per K. W. H. gross.
139 K. W. H. to apply to the various loads are the same at Atlanta schedule.

For Retail Power.

Monthly minimum $2.22.
Excess minimum $1.11 per H. P. connected.
All subject to 10% discount for prompt payment.
Use application form for light and power outside Atlanta.

Georgia Railway and Power Company.

Commercial Lighting Rates in Suburban Districts Not Incorporated Just Outside the City Limits of Atlanta within One-half Mile of Atlanta City Limits.

1	50	50 watt eq.	150	K. W. H. at 10*a*; excess 6 cts. per K. W. H.	
51	60		175		
61	70		200		
71	75		225		
76	85		250		
86	90		275		
91	100		300		
101	110		325	Ditto	Ditto

Minimum monthly minimum within half mile limits, $1.66.
Regular minimum $11. 11¢ per 50 watt equivalent per month.

Discount of 10% on both rates and minimum for prompt payme
More than one-half mile of Atlanta city limits.

1	50	50 watt eq.	150 K. W. H. at 12¢ Excess 6¢ per K. W. H.
51	60		175
61	70		200
71	75		225
76	85		250
86	90		275
91	100		300
101	110		325

Minimum monthly minimum without half-mile limit $2.22.
Regular minimum $11, 11¢ per 50 watt equivalent per month.
Discount of 10% on both rates and minimum for prom
139½ payment.
Use application form for light and power outside Atlan

Lighting Rates in the Following Towns: Hartwell, Royston, L vonia, Decatur, Kirkwood, East Lake, Carrollton, Gainesv Powersville, Cañon.

Monthly Basis.

Residence Lighting Rate.

10¢ per K. W. H. for the first 150 K. W. H. per month, excess 6¢ per K. W. H. Minimum monthly guarantee $1.11. All subj to 10% discount for prompt payment.

Commercial Lighting Rate.

1	50	50 watt equivalent	150 K. W. H. at 10¢ per K. W. H. Excess 6¢ K. W. H.	
51	60		175	
61	70		200	
71	75		225	
76	85		250	
86	90		275	
91	100		300	
101	110		325	
111	125		350	
126	150		400	
151	175		450	ditto ditto
176	200		500	
201	225		550	
226	250		600	
251	300		650	
301	350		700	
351	450		800	
451	500		900	

Minimum monthly guarantee $1.11.
Monthly minimum $11.11 gross per 50 watt equivalent. Rate nd minimum subject to 10% discount for payment promptly.

Retail Power Rates in the Following Towns: Hartwell, Royston, Lavonia, Decatur, Kirkwood, East Lake, Carrollton, Gainesville, Bowersville, Cañon.

Monthly Basis.

Hp. connected	First	Excess
1	75 K. W. H. at 6¢ per K. W. H.	3¢ per K. W. H.
2	130	
3	185	
4	230	
5	275	
6	320	
7	360 Ditto	Ditto
8	400	
140		
9	435	
10	465	2¢ per K. W. H.
12	500	
15	550	
20	650	
25	700	
30	750	
35	800	
40	850	
50	925	

Monthly minimum guarantee, smallest, $2.22.
Over 2 H. P. the guarantee is $1.11 per H. P. connected.
Rates and minimum subject to 10% discount for prompt payment.

Georgia Railway & Power Company.

Lighting Rates in the Followin- Towns: Hapeville, Clarkston, Ingleside, Stone Mountain, Duluth and Whitesburg.

On Monthly Basis.

Residence Lighting Rates.

12¢ per K. W. H. for the first 150 K. W. H. used per month, excess at 6¢ per K. W. H.
Minimum monthly guarantee $1.66.
All subject to 10% discount for prompt payment.

Commercial Lighting Rates.

1 to	50	50 watt equivalent	150 K. W. H. at 12¢ K. W. H.	
			6¢ K. W. H.	
51	60	175		
61	70	200		
71	75	225		
76	85	250		
86	90	275		
91	100	300		
101	110	325	Ditto	Di
111	125	350		
126	150	400		
151	175	450		
176	200	500		

Monthly minimum $1.66.
Regular minimum $11.11¢ per 50 watt, equivalent.
Rate and minimum subject to 10¢ discount for prompt payn

Power Rates in the Following Towns: Hapeville, Clarksto Ingleside, Stone Mountain, Duluth, and Whitesburg.

On Monthly Basis.

1 H. P. connected first	75 K W. H.	7¢ per K. W. H.; exce	
		per K. W. H.	
2	130		
3	185		
141			
4	230		
5	275		
6	320	Ditto	Di
7½	360		
8	400		
9	435		
10	465	" excess 2¢ per K. W. H	
12	500		
15	550		
20	650		
25	700		
30	750		
35	800		
40	850		
50	925		

Monthly minimum guarantee, smallest, $2.22.
Over 2 H. P. the guarantee is $1.11 per H. P. connected.
Rate and minimum subject to 10% discount for prompt payn

Ceiling Fan Minimum for the Following Towns: Hapeville, Ingleside, Clarkston, Stone Mountain, Duluth, and Whitesburg.

Fans on power rates where no motors are used carry the following minimum per month:

1 fan	2.22 gross.
2 fans	3.33
3	3.88
4	4.44
5	5.00
6	5.55
7	6.11
8	6.66
9	7.22
10	7.77
11	8.33
12	8.83
13	9.44
14	9.99
15	10.55
16	11.11
17	11.81
18	12.22
19	12.77
20	13.20

Less 10% discount for prompt payment.

Georgia Railway and Power Company.

Primary Hydro Electric Rates.

142 38,000/22,000/11,000 Volt Service.

K. W.	M. D.	Monthly M. D. charge.	K. W. H. charge.
0	10	2.275	3.13¢
10	20	2.275	1.48
21	30	2.275	1.19
51	100	2.164	1.00
101	200	1.942	.799¢
201	300	1.831	.799¢
301	400	1.610	.733¢
401	500	1.499	.725¢
501	750	1.387	.718¢
751	1,000	1.320	.715¢
1,001	1,250	1.276	.713¢
1,251	1,500	1.165	.661¢
1,501	2,000	1.010	.637¢
2,001	3,000	.954	.611¢
3,001	4,000	.888	.594¢

All of the above rates are subject to a discount of 10% for prom payment.

Georgia Railway & Power Company.

Municipal Hydro Electric Rates.

Service 2,300 Volts, Three-phase 60 Cycles.

K. W. demand.			K. W. h charge.
1	10 at	$2.99 per K. W. M. D. Plus.....	5.5
11	25	1.77	5.1
26	50	1.77	3.6
51	100	1.77	2.2
101	151	1.77	1.8
151 to 500 and above		1.77	.....

1.55¢ for the first 30,000 K. W. H. per month.
Excess over 30,000 K. W. H. per month at .955¢.
501 and above 1.77 per K. W. M. D. Plus 1.44¢ for the first 30,0 K. W. H. per month.
Excess over 30,000 K. W. H. per month at .955¢.
The above rates are subject to a discount of 10% for prom payment.

Georgia Railway and Power Company.

Secondary Hydro Electric Sales.

Georgia Railway and Power Company Secondary Hydro Elect Rates.

38,000/22,000/11,000 Volt Service.

H. P. connected.		K. W. H. charge.	Y'rly guarantee.
50	150	2.11¢	$13.33
151	250	1.22¢	11.11
Above 250 H. P.....		1.11¢	8.88

Less 10% discount for prompt payment.

Rural Services on Hydro Electric Lines.

Rural Service on H. E. Lines.

Cotton Gins, Fertilizer Mixing Plants, and All Short-term Seasonal Business.

13

H. P. connected.	Basic amount.	Basic rate, K. W. H.	Rate per K. W. H. for excess of basic amt.	Minimum seasonal guarantee per H. P. connected.
7½	380	7¢	3¢	$10.00 net.
10	465	7	3	"
15	550	7	3	"
20	650	7	3	"
25	700	7	3	"
30	750	7	3	"
35	800	7	3	"
40	850	7	3	"
50	925	7	2	$9.00 net.
60	940	7	2	"
75	960	7	2	"
80	965	7	2	"
90	970	7	2	"
100	1,000	7	1,000 at 2¢	

Excess 1½¢. $8.00 net.

Over 100 H. P. connected basic amount is 10 K. W. H. per H. P. connected at 7¢ 10 K. W. H. per H. P. connected at 2*a* all on excess of both amounts at 1½¢ subject to 10% discount for prompt payment. Short term business must be operative for at least four months of each year.

Should the customer desire service at any time during the period of temporary discontinuance, the company will allow him to take electricity under the terms and conditions of said contract upon his notifying the company of such desire, one week in advance and upon payment to the company of the sum of $10 for making temporary connection. In the event of such temporary re-connection, a monthly minimum charge of $1.66 gross per H. P. month shall be due and payable while the temporary service is connected.

Contract should be made for a term of five years.

Company furnishes transformers, delivers 550 or 2,300 volts and builds 500 ft. of line. Voltage and line extension to be determined by local conditions.

Rural Service on Hydro-electric Lines.

Grist mills, saw mills, dairies, pumps, etc., on 12 month business same basic amounts, basic and secondary K. W. H. charges as applied to cotton gins.

Monthly minimum guarantee $1.11 per H. P. connected, monthly minimum to be less than $11.11. Subject to 10% disco for prompt payment.

Any seasonal or short term business may be added to th
144 contracts by having the customer sign the short term addi to contract provided for this class of business.

Company will furnish transformers, deliver 550 or 2,300 volts a build 55 ft. line free, voltage and line extension to be determined local conditions.

Georgia Railway & Power Company.

Gas Rates.

Decatur and Surrounding Territory.

$1.30 per M cu. ft. per month less 10¢ per M cu. ft. for pro payment.

Monthly minimum charge 50¢ net.

All gratuitous service to be dispensed with.

Street and Suburban Railway Rates in Atlanta and Suburbs.

The street railway fares to be increased one cent on each five c charged under existing fares.

Transfers under present rules to be issued for a charge of t cents for each transfer ticket issued.

Street railway rates in Gainesville, Georgia.

Street railway fare to be straight six cents per passenger.

EXHIBIT "E."

Section 1. The general assembly of the State of Georgia to ena that from and after the passage of this act, George Hillyer, James Grant, B. D. Smith, J. B. Campbell, Eden Hillyer, John G. We moreland, J. J. Thrasher, J. J. Morrison, W. B. Cox, J. E. Barl William Solomon, W. R. Webster, and such others as they m associate with them, and their successors and assigns, be and th are hereby declared a body politic and corporate by the name a style of the Atlanta Street Railroad Company, and in, and by th name may sue and be sued, plead and be impleaded in any court

law or equity in this State, or where their rights may come
145 question may have and use a common seal, and the same al or destroy at pleasure, and purchase, accept hold, enjoy convey any property, real, personal, or mixed, that may be necessa for the purposes hereinafter set forth, or which they may acquire the progress of their business.

Sec. II. That said company shall have the exclusive power a authority to survey, lay out, construct and equip, use and emp street railroads in the city of Atlanta, subject to the approval of t

ity council thereof, for each route selected, first had and obtained, efore the work thereon shall be commenced, the property of the said ompany to be subject to the same State, county and city taxes as he property of individuals in said city of like value is, or may be ubject to, unless the city council should, at any time, think fit to exmpt the same, either in whole or in part, from the payment of city axes, provided, that the rates of fare and freight upon said railroad hall be subject to the approval of the mayor and city council of the ity of Atlanta.

Sec. III. That the capital stock of said company shall be one hundred and fifty thousand, which may be increased to three hundred housand dollars, should the business of the company require it, books of subscription for which shall be opened in Atlanta, and at ny other point or points which may be deemed advisable in the United States.

Sec. IV. That the officers of said Atlanta Street Railroad Company hall be a president, secretary and five or more directors to be chosen t such time and in such manner as the corporators or a majority f them, may determine, and the said president and board of irectors shall have full power and authority to establish all by-aws, rules and regulations for administering the affairs of said company, and for carrying on the business, and to do all acts 46 and to give all orders therein which may be necessary, and not inconsistent with the constitution and laws of this State, r of the United States.

Sec. V. That the said Atlanta Street Railroad Company shall not mploy any steam engines upon their lines without the consent of he city council, who in granting the order allowing the same, shall prescribe the rules to be observed by said company and by individuals o avoid injury to persons or property by the use of said engines.

Sec. VI. That the said Atlanta Street Railroad Company may exend any one or more of their lines of road in the county of Fulton ver and beyond the corporate limits of said city, not more than ne mile from the present corporate limits, should they see proper o do so, and in that event the damages to the owners of the strip r strips of land through which said road may run shall be ascertained nd settled in the same manner as is prescribed by the charter of the entral Railroad and Banking Company.

Sec. VII. That said Atlanta Street Railroad Company may convey pon their lines, either passengers or freight as the exigencies of the usiness community and public wants may require.

Approved 23 February, 1866.

Exhibit "F."

Section 1. Be it enacted by the general assembly of the State of eorgia, that the charter of the Atlanta Street Railroad Co., inorporated by act of the general assembly of this State, approved

February 23, 1866, be, and the same is, hereby extended and renew for the period of thirty years from and after January 1st, 1896.

147 Sec. II. Be it further enacted, etc., that said Atlanta Str Railroad Company, as now incorporated shall have power purchase the railroads and property of other street railroads in t city of Atlanta, or extending from the city of Atlanta into t counties of Fulton and De Kalb, and to operate the roads so pu chased, provided that nothing in this act shall be construed authorize said company to purchase, lease or otherwise obtain co trol of any other railroad, so as to defect or lessen competition operate monoply.

Sec. III. Be it further enacted, etc., that said Atlanta Street Ra road Company shall have power to hold, purchase, own, use, impro and embellish real estate to be used in connection with its railroa and as may be necessary for its legitimate street railway purpo under such reasonable rules and regulations as it may establish.

Sec. IV. Be it further enacted, etc. that said Atlanta Street Ra road Company shall have power to extend its lines of road to an point or points in the counties of Fulton and De Kalb but making these extensions it shall not use or occupy any public ro or highway without first obtaining permission of the commissione of roads and revenues of the county within which such public road highway may be.

Sec. V. Be it further enacted, etc. That the said Atlanta Str Railroad Company shall have power to adopt and use any moti power adapted to its purposes, subject, in its use within the city Atlanta, to such reasonable rules and regulations as the said city m establish and, without the city of Atlanta, subject to such reaso able rules and regulations as the commissioners of roads an 148 revenues may establish. And said corporation shall ha power to increase its capital stock to a sum not exceeding o million of dollars, and it shall have power to issue its bonds f corporate purposes, and to secure the same by mortgage or trust de in its property, provided that nothing in this act contained sha have the effect or be construed as extending to any railroad, or lin of road or appurtenances, which said Atlanta Street Railroad Co pany may purchase under the authority of this act, any exemptio from taxation of any kind; and provided, also, that nothing in th act contained shall have the effect of anywise extending, enlarg or continuing any exemption from taxation of any kind, in favor the said Atlanta Street Railroad Co. other than may already exist favor of said company, or of saving or reserving to said Atlan Street Railroad Company any right of exemption from taxatio which, under the law, said company would or might be deprived by this amendment under the laws of this State.

Sec. VI. Be it further enacted, that all laws and parts of laws conflict with this act be, and the same are, hereby repealed.

Approved December 26, 1890.

EXHIBIT "G."

Charter of Atlanta Consolidated Street Railway Company.

TATE OF GEORGIA:

y His Excellency W. J. Northern, Governor and Commander-in-Chief of the Army and Navy of this State and the Militia thereof, to all to whom these presents may come, Greeting:

Whereas, Joel Hurt, William H. Patterson, Henry A. Inman, ena R. Bullon, G. L. Thompson and Walter S. Carfield, all of the city of Atlanta, county of Fulton, and State of Georgia; 49 Norwood Robson, of Kirkwood, De Kalb county, Ga., H. E. W. Palmer of Edgewood, Fulton county, Ga.; Alfred A. lasier and James F. A. Clark, of the city of Boston, county of uffolk, State of Massachusetts, Charles A. Coffin, of Lyon, county of ssex, and State of Mass., have filed in the office of the secretary f State certain articles of association with a view of forming a corporation, to be known as "Atlanta Consolidated Street Railway ompany" and with a capital of two million dollars ($2,000,000) r the purpose of constructing, maintaining and operating a raiload, to wit:

A system of street and suburban railroads for public use in the onveyance of persons and property in the counties of Fulton, De alb and Cobb, in Ga., through the various streets of Atlanta, Ga., d from Atlanta to Decatur and through and over the streets of ecatur and from Atlanta to and through West End to West View emetery, and on over and along the streets of said Atlanta, Decatur d West End, and to such localities in said counties of Fulton, e Kalb and Cobb as may be convenient or expedient, and returning Atlanta (provided that where the streets of any city or town and ads of said counties are occupied, consent *much* first be obtained om the proper authorities), and, in addition thereto, to use and aintain and operate its cars and other rolling stock, on, over and pon such tracks already built of other railroad companies which may purchase, lease or otherwise lawfully own or control, and er all rights of way it may obtain from time to time and have mplied with the statutes in such cases made and provided:

Therefore, the State of Georgia hereby grants unto the above med persons, their successors and assigns, full authority by and under the said name of Atlanta Consolidated Street Railway 50 Company, to exercise the powers and privileges of a corporation for the purpose above stated and in accordance with the id articles of association and the laws of this State.

In witness whereof, these presents have been signed by the g ernor and attested by the secretary of State of the State of Ga., Atlanta, and the great seal of the State of Ga., attached thereto, t sixteenth day of May, 1891.

W. J. NORTHERN,
Governor.

By the Governor:
PHILIP COOK,
Secretary of State.

Atlanta Consolidated Street Railway Company Changes Its Name Atlanta Railway and Power Company.

To all to whom these presents may come, Greeting:

Whereas, The Atlanta Consolidated Street Railway Company corporation created and existing under the laws of this State, h filed in this office in terms of the law, a petition asking that charter be amended by changing its corporate name from Atla Consolidated Street Railway Company to Atlanta Railway & Po Co., and has complied with all the requirements of the law in s cases made and provided, therefore, the State of Georgia here amends the charter of the said Atlanta Consolidated Street Railw Company by changing its corporate name from Atlanta Cons dated Street Railway Company to Atlanta Railway and Power C pany.

In witness whereof, These presents have been signed by the S retary of State, and the great seal has been attached hereto at t capitol, in Atlanta, on this first day of July, 1899.

(Signed) PHILLIP COOK,
Secretary of State of Georgia.

(Seal attached.)

151 EXHIBIT "H."

Charter of Georgia Railway and Electric Company.

STATE OF GEORGIA:

Office of Secretary of State,

Atlanta, Ga.

To all to whom these presents may come, Greeting:

Whereas, in pursuance of an act of the general assembly of t State of Georgia, approved December 17, 1892, and acts amendat thereof, H. M. Atkinson, P. S. Arkwright, R. E. Cullinane, S. Bradley, M. B. Lipscomb, F. M. Sisk, G. W. Brine, J. G. Rossm J. R. Hunter and W. B. Stovall, all of Atlanta, Fulton coun Ga., having filed in the office of the secretary of State a cert

petition seeking the formation of a corporation to be known as Georgia Railway & Electric Company, with its principal office in Atlanta, Ga., with a capital stock of three million dollars ($3,000,000) of which at least three hundred thousand dollars may be preferred stock, with the right to increase either common or preferred stock, or both, as provided by law, for the purpose of purchasing, owning, constructing, equipping, maintaining and operating a street and suburban railroad within the city of Atlanta, Ga., and to and from said city to divers points within the counties of Fulton, De Kalb and in said State (with the right hereafter to extend according to law, its lines as stated in the petition for incorporation), along the routes indicated in the application for this certificate, a copy of which said applicatin is hereto attached and made a part hereof; said corporation to be chartered for the term of one hundred and years and to have, exercise, and enjoy all the rights, powers and privileges incident to corporations of such character under the laws of this State; especially the powers and privileges of trans-
152 porting persons and property over its streets and suburban lines, and to charge for the carriage thereof; and also to purchase and own, build, maintain and operate, electric light and power plants, and to furnish and sell electric light and electric power, and having complied with the statutes in such cases made and provided. Therefore, the State of Georgia hereby grants unto the above named persons, their successors and assigns, full authority by and under the said name of Georgia Railway and Electric Company to exercise the powers and privileges of a corporation for the purpose above stated, subject to the provisions of article four (4) of the constitution of this State, and all the laws governing railroad companies of force at the date of this certificate, or that may hereafter become of force, either by constitutional or statute law, or by any rules and regulations of the railroad commission of this State, or otherwise, which govern and control the operation of railroads in this State. In witness whereof, there presents have been signed by the Secretary of State and to which is annexed the great seal of the State, at Atlanta, Ga., this twenty eighth day of January, 1922.

PHILLIP COOK,
Secretary of State.

EXHIBIT "H."

First Amendment to Charter of Georgia Railway and Electric Company.

STATE OF GEORGIA

Office of Secretary of State,

Atlanta.

153 To all to whom these presents may come, Greeting:

Whereas, in pursuance of an act of the general assembly of the State of Georgia, approved December 17, 1892 and acts amendatory

thereof, Georgia Railway and Electric Company having filed in t office a certain petition asking that its charter be amended so as authorize an increase of its capital stock, and having complied w the statutes in such cases made and provided:

Therefore, The State of Georgia hereby amends the charter of s Georgia Railway & Electric Company, as follows, to wit:

The capital stock of said corporation is increased from the sum $3,000,000 to the sum of six million, eight hundred thousa ($6,800,000) dollars, consisting of $5,000,000 of common stock a $1,800,000 of preferred stock.

The said railway company to exercise the powers and privile hereby conferred, subject to article four (4) of the constitution this State, and all laws governing railroad companies, at the da hereof, or that may hereafter become of force either by constitutio or statute law, or by any rules or regulations of the railroad comm sion of this State, or otherwise, which govern and control the ope tion of railroads in this State.

In witness whereof, these presents have been signed by the Sec tary of State of the State of Georgia, at the capitol, in Atlanta a the great seal of the State attached hereto, this twenty-sixth day September, 1902.

PHILLIP COOK,
Secretary of State.

Second Amendment to Charter of Georgia Railway & Electric Company.

154 STATE OF GEORGIA:

Office of Secretary of State,

Atlanta.

To all to whom these presents may come, Greeting:

Whereas, in pursuance of an act of the general assembly of t State of Georgia, approved December 17, 1892, and acts amendato thereof, Georgia Railway & Electric Company having filed in t office a certain petition asking that its charter be amended so as authorize an increase of its capital stock, and having complied w the statutes in such cases made and provided:

Therefore, the State of Georgia hereby amends the charter of s Georgia Railway & Electric Company, as follows, to wit:

So as to increase the capital stock of said corporatoin from t sum of six millions, eight hundred thousand ($6,800,000) dolla to the sum of eight million four hundred and fourteen thousan six hundred ($8,414,600) dollars, consisting of $2,400,000 preferr stock and $6,114,600 common stock.

The said railroad company to exercise the powers and privileg herein conferred, subject to article four (4) of the constitution

his State, and all the laws governing railroad companies at the ate hereof, or that may hereafter become of force, either by consti- utional or statute law, or by any rules or regulations of the railroad ommission — operation of railroads in this State.

In witness whereof, these presents have been signed by the Secre- ary of State of the State of Georgia, at the capitol in Atlanta and the reat seal of the State attached hereto, this eighth day of July, 1903.

PHILLIP COOK,
Secretary of State.

55 *Third Amendment to Charter of Georgia Railway & Electric Company.*

TATE OF GEORGIA:

Office of Secretary of State,

Atlanta.

o whom it may concern, Greeting:

Georgia Railway and Electric Company, a corporation chartered y the secretary of State of Georgia, January 28, 1902, and amended nder the general law, September 20, 1902, and July 8, 1905, re- pectively, having petitioned for an amendment of the charter of aid corporation in terms of the law in such cases made and provided, he corporate powers and privileges set out in the provisions of ivision 4 of section 1 of article 6 of chapter 2 of the Code of eorgia, 1895, and particularly the provisions contained in sections 181, 2182 and 2183 of said code, providing for the grant of cor- orate powers and privileges by the secretary of State to street rail- oad companies are hereby conferred upon Georgia Railway and lectric Company.

In testimony whereof, I have hereunto set my hand and affixed he seal of my office, at the capitol, in Atlanta, this 16 day of Oct., 903, and of the independence of the United States of America the 28.

[SEAL.]

PHILIP COOK,
Secretary of State.

EXHIBIT "I."

Deed from Atlanta Street Railway Company to Atlanta Consolidated Street Railway Company.

Deed Book C-4, Page 669, Fulton County Records.

EORGIA,
Fulton County:

This indenture made and entered into this the twenty-first day f September, 1891, between the Atlanta Street Railroad Company

of the one part, and the Atlanta Consolidated Street Railw
156 Company of the other part (both being corporations und
the laws of the State of Georgia, and having their respecti
offices and places of business in Atlanta, in said county);

Witnesseth: That whereas said party of the first part (herei
after called the Atlanta Company), did on the 15 day of Sept., 189
at a meeting of its stockholders wherein all of its stock was repr
sented, by a unanimous vote, pass a resolution as follows:

"Whereas, The several stockholders of this company are interest
in the development and extension of the business and lines of th
Atlanta Consolidated Street Railway Company, a corporation estab
lished under the laws of the State of Georgia, and having its prin
cipal place of business at Atlanta, in said State (hereinafter calle
the Consolidated Company).

"And whereas, The Consolidated Company desires to acquire a
the real estate, road bed, tracks, rolling stock, equipments and pro
erty of every kind and description, owned by this company, inclu
ing all its contracts, choses in action, rights, privileges an
franchises:

"And whereas, by reason of their interest in said Consolidat
Company, said several stockholders are willing that all of the co
pany's property should be so acquired by the Consolidated Compan
and hereafter owned and enjoyed by it, in consideration of th
assumption by the Consolidated Company of all such indebtedne
as may be owing by this company.

Now then, In consideration of the premises, and of the expectati
of the part of said several stockholders of being benefited as stoc
holders of the Consolidated Company, or as parties otherwise interes
in its business, by that company's acquiring and holding to its ow
use said property, rights, franchises, etc., of this compan
157 it is voted that the directors of this company be, and a
hereby authorized and directed, in its name and behalf, t
cause to be executed and delivered, proper and sufficient deeds, an
any other suitable instrument of writing, conveying and transferri
to the Consolidated Company, for its sole use and benefit, in co
sideration of the assumption of its debts, as previously provided, a
the real estate, road bed, tracks, rolling stock, equipments and pro
erty of every kind and description, owned by this company, now
at the time the conveyance or transfers are made, including all i
contracts, choses-in-action, rights, privileges, and franchises. Th
Consolidated Company shall, however, as a part of the transaction b
which it acquires said property, franchises, etc., execute and deliv
to the said Atlanta Street Railroad Company an agreement in writin
to assume and pay all its indebtedness."

And whereas, afterwards, to wit: on said 15 day of Sept., th
board of directors of said Atlanta Company did meet and resolve a
follows:

"Whereas, at a special meeting of the stockholders of this com
pany, held on the 15 day of September, 1891, at which every stock

holder of the company was present in person or by proxy, a vote, whereof the following is a copy was unanimously adopted, viz:

"Whereas, the several stockholders of this company are interested in the development and extension of the business and lines of the Atlanta Consolidated Street Railway Company, a corporation established under the laws of the State of Georgia, and having its principal place of business at Atlanta, in said State (hereinafter called the Consolidated Company).

"And whereas, the Consolidated Company desires to acquire all the real estate, road bed, tracks, rolling stock, equipment and property of every kind and description, owned by this company, including all its contracts, choses-in-action, rights, privileges and franchises.

"And whereas, by reason of their interest in said Consolidated Company, said several stockholders are willing that all of the company's property should be so acquired by the Consolidated Company, and hereafter owned and enjoyed by it, in consideration of the assumption by the Consolidated Company in all such indebtedness as may be owing by this company.

Now then, in consideration of the premises, and of the expectation on the part of said several stockholders of being benefited as stockholders of the Consolidated Company, or as parties otherwise interested in its business, by that company's acquiring and holding to its own use said property, rights, franchises, etc., of this company, it is voted that the directors of this company be, and are, hereby authorized and directed, in its name and behalf, to cause to be executed and delivered, property and sufficient deeds and any other suitable instrument in writing, conveying and transferring to the Consolidated Company for its sole use and benefit, in consideration of the assumption of the debts, as previously provided, all the real estate, road bed, tracks, rolling stock, equipment, and property of every kind and description, owned by this company, now or at the time the conveyance or transfers are made, including all its contracts, choses-in-action, rights, privileges, and franchises. The Consolidated Company shall, however, as a part of the transaction by which it acquires said property, franchises, etc., execute and deliver to the Atlanta Street Railroad Company an agreement in writing to assume and pay for all its indebtedness."

"Now, then it is voted that the president and treasurer of the company are hereby authorized and directed in its name and behalf to make execute and deliver to the Atlanta Consolidated Street Railway Company proper deeds and any other instruments for carrying out the purpose of said vote adopted by the stockholders;

"Voted further, that the president and treasurer obtain from said Consolidated Company an agreement in writing to assume any pay all the indebtedness of this company."

Now, pursuant to said action of said stockholders and directors for and in consideration of the sum of five ($5.00) dollars to the said Atlanta Company by said Atlanta Consolidated Street Railway

Company (hereinafter called the Consolidated Company) in hand paid, at and before the delivery of these presents, the receipt whereof is hereby acknowledged, as well as in consideration of the undertaking of said Consolidated Company to assume and pay all the indebtedness of said Atlanta Company, to it delivered simultaneously with the delivery of these presents; the said Atlanta Company has bargained and sold, and does hereby sell, and convey unto said Consolidated Company, its heirs and assigns and successors, all the real estate, road bed, tracks, rolling stock equipments and property of very kind and description, now owned by the said Atlanta Company, including all its contracts, choses-in-action, rights, privileges and franchises.

And which railroads are more fully described as follows:

Route of the Atlanta Street Railroad.

On Peachtree Street, from Wall Street, north throughout the city to Wilson Avenue, then on Wilson Avenue to Piedmont Park, also on Ponce de Leon Avenue, from Peachtreet Street to Ponce de Leon Springs, also on Marietta Street, from Peachtree Street to the city limits and beyond to Howell's Mill Road, opposite the Exposition Mills. On Decatur Street from Peachtree Street to Daniel St., on Edgewood Avenue from Peachtree Street to Pryor Street. On Broad Street from Marietta Street to Alabama Street, Alabama Street to Whitehall Street, Whitehall Street to a point near the city limits thence across the company's right of way and under the Central Railroad to Peters Street; along Peters Street to Park Street, along Park Street to Lee Street, along Lee to Gordon and along Gordon Street to the western limits of West End. Also on Hunter Street from Broad to Whitehall, also on Alabama Street from Whitehall to Loyd, along Loyd to Waverly Place, along Waverly Place to Washington, along Washington to Jones, along Jones to Capitol Ave., and along Capital Ave. to Bass Street. To have and to hold, the said rights, things and premises, with all and singular the rights, members and appurtenances thereof to the same being or belonging or in any wise appertaining to the only proper use, benefit and behoof of the said Consolidated Company, its heirs, assigns and successors, forever in fee simple.

And the said Atlanta Company, for itself (its heirs) and legal representatives, the said rights, things and premises and appurtenances unto the said Consolidated Company, its heirs, assigns and successors, against the said Atlanta Company, its heirs, assigns and legal representatives and all and every other person or persons whatever, shall and will warrant and forever defend by virtue of these presents.

In witness whereof, the said Atlanta Company has caused its name and its seal to be hereunto signed and put, pursuant to said resolution, by its president H. E. W. Palmer, and its treasurer, Alfred A. Glasier, the day and year first above written.

[SEAL.] THE ATLANTA STREET RAILROAD COMPANY,
By H. E. W. PALMER,
President.

161 ALFRED A. GLASIER,
Treasurer.

Signed, sealed and delivered in the presence of
T. A. HAMMOND, JR.
W. A. SPENCER, [SEAL.]
N. P., Fulton County, Ga.

Signed, sealed and delivered by Alfred A. Glasier, Treasurer, in presence of
ROBERT T. CLAPP.
CHAS. HALL ADAMS. [SEAL.]
Commissioner of Deeds for the State of Georgia in the State of Massachusetts.

STATE OF MASSACHUSETTS,
County of Suffolk,
City of Boston, ss:

I, Charles Hall Adams, Commissioner of Deeds in said State of Massachusetts, for the State of Georgia, do certify that A. A. Glasier whose signature I above attested is to me personally known and he did sign deed in presence of myself and R. P. Clapp, the other attesting witness, for the purposes in said deed set forth, this twenty-sixth day of September A. D. 1891.

(Signed) CHAS. HALL ADAMS,
[SEAL.] *Commissioner of Deeds for the State of Georgia in the State of Mass.*

Deed of Atlanta Railway and Power Company to Georgia Railway and Electric Company.

Deed Book 160, Page 181, Fulton County Records.

STATE OF GEORIA,
Fulton County:

This indenture, made this twentieth day of February A. D.
162 1902, by and between Atlanta Railway and Power Co., a corporation under the laws of the State of Georgia, having its principal place of business in the city of Atlanta, said Fulton

county, Ga., party of the first part, and Georgia Railway & Electric Company, a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of Georgia, having its principal place of business in the city of Atlanta, said Fulton county, Ga., party of the second part.

Witnesseth, That the said party of the first part, for and in consideration of the sum of ten thousand dollars ($10,000.00) and other valuable considerations to it in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, has granted, bargained, sold, assigned, transferred, aliened, conveyed, released and confirmed, and by these presents does grant, bargain, sell, assign, transfer, alien, convey and release and confirm unto the said party of the second part, its successors and assigns, all the property, real, personal and mixed, of any kind whatsoever of said party of the first part, together with all its electric lighting and street and suburban railway plants and properties, all of its real estate, buildings, improvements and fixtures, all of its roadbed, rights of way, tracks, rails, sidings, turnouts, rolling stock, equipment, motors, cars, bridges and right in or over bridges, culverts, piers, depots, grounds, stations, workshops, steam plant, electric plant, machinery, engines, piping, boilers, dynamos, electric machinery, motors, wires, poles, lines, appliances, fixtures, apparatus, lamps, conduits, ducts, tubes, subways, cables, manholes, fuel, supplies, office furniture, fixtures, tools, wagons, live stock, contracts, rights, privileges, easements and franchises, and all of its property of whatever description and wheresoever situated, together with all and singular the rights, privileges and
163 appurtenances thereto belonging or in any wise appertaining, and all things in action, contracts, claims, demands, business and good will of the said party of the first part, as well as in equity, together with all the rights, tolls, issues, incomes, privileges and franchises growing out of or pertaining to said property, and all rights, interest, profits, easements and franchises of the said party of the first part, with full power of the party of the second part, its successors and assigns, to succeed to and enjoy all the rights, privileges, immunities and franchises now held or exercised by the said party of the first part.

There are included among other things, in the property hereby conveyed, the following described property, to wit:

1. The following lines of railway, situated in the city of Atlanta and its vicinity, and in the counties of Fulton and De Kalb, and in various municipalities in each of said counties, in the State of Georgia, namely,

On Marietta Street from Peachtree Street to a point near Van Winkle's post office, on Decatur Street from Peachtree Street to Cornelia Street; on Broad Street from Peachtree Street to Mitchell Street, on Mitchell Street from Broad Street to Davis Street; on Madison Ave. from Mitchell Street to Nelson Street, on Nelson Street from Madison Ave., to Tattnall Street; on Walker Street from Nelson Street to Peters Street, on Peters Street from Walker Street to Lee

d Street, on Leonard Street from Peters Street to Ella Street, on
lla Street from Leonard Street to West End Ave., on West End
ve., from Ella Street to Ashby Street, and Ashby Street from West
nd Ave., to Lucile Ave., on Lucile Ave., from Ashby Street to Gor-
on Street, on Gordon Street from Lucile Avenue, to entrance of
West View Cemetery, on Edgewood Ave., from Peachtree
64 Street to Hurt Street, on North Boulevard from Edgewood
Ave., to Southern Railway, on Jackson Street from Edgewood
ve., to Ponce de Leon Ave., on Exchange Place from Edgewood Ave.,
o Ivy Street; on Tattnall Street from Nelson Street to West Hunter
treet, on West Hunter Street from Tattnall Street to city limits, on
orth Pryor Street from Edgewood Ave., to Peachtree St , on Hous-
on Street from Peachtree St., to Hilliard St. from Houston St. to
ighland Ave., on Highland Ave., from Hilliard Street to Virginia
ve., on Virginia Ave., from Highland Ave.. to Boulevard, on Hurt
treet from Decatur Road to Euclid Ave., on Euclid Ave., from Eliza-
eth St. to Moreland Ave., and on Moreland Ave., about a half mile
orth from Euclid Ave., on Elizabeth Street from Euclid Ave., to
dgewood Ave., on Decatur Road from Hurt Street to Moreland Ave.,
n Alabama Street from Broad Street to Central Ave., on Whitehall
treet from Alabama Street to alley way leading under Central and
tlanta and West Point Railroad, along said alley way from White-
all Street to Peters Street, along Peters Street to Park Street; along
Park Street to Lee Street, on Lee Street from Park St., to East Point
oad; thence along East Point road through towns of Oakland City
nd McPherson to town of East Point, about six miles distant from
ity; on Gordon Street from Lee Street to Holderness Street on Smith
Street from Whitehall Street to Glenn Street, on Hunter Street from
Broad Street to Whitehall Street, on Luckie St from Broad Street to
Spring Street, on Spring Street from Luckie Street to Powers Street
or West Peachtree Place; on Powers Street from Spring to West
Peachtree Street, on West Peachtree Street from Baker Street to Sixth
Street, on Mitchell Street from Broad Street to Capital Av., on Capital
Ave., from Mitchell Street to Bass Street on Grant Street from De-
catur Street to East Fair Street on Central Ave., from Ala-
165 bama Street to Pulliam Street, on Pulliam Street from Cen-
tral Avenue to Clark Street; on Clark Street from Pulliam
Street to Washington Street, on Waverly Place from Central Ave.,
to Washington Street, on Washington Street from Waverly Place to
Ormond Street, on Trinity Ave. from Washington Street to East
Fair Street; on East Fair Street from Trinity Ave., to Pearl Street,
on Pearl St. through private right of way, to county of De Kalb at
Dehlgreen's Station, thence further along said private right of way
and through county of De Kalb to a point opposite Agnes Scott
Institute in town of Decatur about seven miles distant from center
of city; on Park Ave., from West Fair Street to Berne St., on Berne
Street from Park Ave., to South Boulevard on South Boulevard to
a point about two hundred feet south of Berne Street, on Fraser
Street from East Fair Street to East Hunter Street, on East Hunter
Street from Fraser Street to South Pryor Street, on South Pryor
Street from Alabama Street to Ridge Ave., from South Pryor

St. along Ridge Ave., and McDonough Road, to a point opposi
Federal Prison, on Georgia Ave., from South Pryor Street to Cheroke
Ave., on Cherokee Ave., from Georgia Ave. to Ormond Street
on Peachtree Street from Marietta Street to Southern Railwa
bridge at Brookwood, on Ponce de Leon Ave., from Peachtree Stre
to Southern Railway, on Linden Street from Peachtree Street t
West Peachtree Street on Tenth Street from Peachtree Street t
Piedmont Ave., and on Fourteenth Street from Peachtree Street t
Piedmont Ave., and Jones Ave., from Marietta Street to Gray Street
on Gray Street from Jones Ave., to Simpson Street, on Simpso
Street from Gray Street to Walnut Street, on Courtland Street fro
Houston Street to Pine St., on Pine Street from Courtland St. t
Angier Ave., and Angier Ave., from Pine Street to North Boulevar
on, Piedmont Avenue from Pine Street to Fourteenth Street, o

Forsyth Street from Church Street to West Fair Street; o

166 West Fair Street from Forsyth Street to Cooper Street o

Cooper Street from Fair Street to Hendrix Ave. (o
Hendrix Ave., from Cooper Street to South Pryor Street, o
Ormond Street from South Pryor Street to Cherokee Ave., on Rich
ardson Street from Cooper Street to McDaniel Street, on McDanie
Street throughout its length and over private right of wa
and several country roads to Fort McPherson, known as the For
McPherson line; on Glenn Street from McDaniel Street to car barn
near Southern Railway; on Crumley Street from Cooper Street abou
seven hundred feet to baseball ground, on Church Street fro
Forsyth Street to Cain Street, on Cain Street from Church Street t
Orme Street, on Orme Street from Cain Street to Mills Street, o
Mills Street from Orme Street to Luckie Street, on Luckie Stree
from Mills Street to North Ave., on Hemphill Ave., from North
Ave., to Pumping Station of City Water Works, on Ellis Street fro
Church Street to Hilliard Street, on Hilliard Street from Ellis Stree
to Irwin St. on Irwin St., from Hilliard St. to Sampson St., o
Sampson St., from Irwin St. through private right of way under
Southern Railway to Lake Ave., thence along Lake Ave., to Euclid
Ave., thence from Euclid Ave., along McLendon Street to the county
of De Kalb and along private right of way and Decatur road to town
of Decatur about seven miles from the city of Atlanta, thence
through and around town of Decatur on Davis Street from Mitchell
Street to Magnolia St., on Magnolia St. from Davis St. to Chestnut
St., on Haynes St. from Mitchell St. to Chapel St., on Chapel St
from Haynes St. to West Fair St., on West Fair St. from Chapel
St. to Chestnut St. on Chestnut Street from West Fair Street t
Greensferry Ave., on Greensferry Ave. from Chestnut St. to Lee St.
on Lee St. from Greensferry Ave. to Park St. on Park Street fro

Lee Street to Ashby St. on Ashby Street from Park Street t

167 Matthews St. on Woodward Ave., from Washington Street t

Kelley St., on Kelley Street from Woodward Ave. to Glen
wood Ave., on Glenwood Ave. from Kelley Street to Grant St., o
Grant St. from Glenwood Ave., to Augusta Ave., on Augusta Ave
from Grant Street to Cherokee Ave., from a point known as Soldier
Home Junction, along private right of way and western boundary

f De Kalb county, to Atlanta Ave., along Atlanta Ave., to Underood Ave., and along Underwood Ave., and private right of way to oldiers Home, known as Soldiers' Home Line.

Provided, however, that the particular description of real and ersonal property above given shall not be construed to exclude any ther property, real or personal, rights, privileges, franchises and ssets intended to be conveyed hereby, it being the intention hereof o hereby convey to said party of the second part all property, assets, ights, privileges, easements, immunities and franchises of whatever ind and wherever situated, whether hereinbefore described or not, hich, or any right, title or interest in which, the said party of the irst part now owns or is in any manner entitled to.

The several portions of property now owned by the party of the irst part and hereinbefore described and conveyed are conveyed subect, however, to the following mortgages, so far as such property s severally covered by said mortgages, to wit:

1. A mortgage executed by the Atlanta Street Railroad Company o the Central Trust Company of New York, as trustee, dated June 0, 1890, to secure an issue of $225,000.00 of bonds of said Co.

2. A mortgage executed by the Atlanta Consolidated Street Railay Company to the Mercantile Trust and Deposit Company of Baltimore, as trustee, dated January 2, 1899, securing $2,275,000 of onds of said company.

3. A mortgage executed by the Atlanta Railway & Power
168 Company and a similar one executed by the Atlanta Railway Company to the Mercantile Trust and Deposit Company of Baltimore, as trustee, dated July 2, 1900, securing bonds to the mount of $2,500,000.00 of said Atlanta Railway and Power Company.

And the said party of the second part, as a part of the consideraion for this conveyance assumes the payment of the said bonds now issued and outstanding under the said mortgages above referred to, nd also assumes the payment of all other liens and incumbrances pon said property and all other debts of the said party of the first art, and agrees to hold the said party of the first part harmless gainst the same.

To have and to hold, the said property, rights, interests, privileges, nd franchises, together with all the rights, immunities, easements, nd appurtenances belonging to or in anywise appertaining to the ame to the said party of the second part, its successors and assigns, orever in fee simple, and the said party of the first part hereby warants the title to the property unto the said party of the second part, its successors and assigns, against the claims of all persons, except as above stated, and further, the said party of the first part hereby covenants and agrees to make, execute and deliver to said party of the second part, its successors and assigns, all such further instruments and conveyances as in the opinion of the said party of the second part, or its legal counsel, may be necessary or proper to further secure and assure the title, enjoyment and possession of said party of the

second part to the property, rights, immunities, privileges and fr
chises intended to be hereby conveyed.

In witness whereof, the said party of the first part has caused th
presents to be executed and delivered in its name and beh
169 and under its corporate seal, by its proper officers, hereto du
authorized by proper corporate action on the day and ye
first above written as the date hereof.

ATLANTA RAILWAY AND POWER COMPANY, [SEAL.]
By D. A. BELDIN,
President.
A. J. CHAPMAN,
Secretary.

Signed, sealed and delivered in the presence of
W. H. GLENN.
W. H. WILLIAMS,
N. P., Fulton County, Ga.

(EXHIBIT "K.")

Grant to Atlanta Street Railroad Company to Construct Railw
on Any Street in City and Across Bridges on Broad Street.
Not Required to Flag Between Crossings or Macadamize Stree
(3) *Exemption from Taxes.* (4) *Amount of Fare to be Charge*

An Ordinance in Relation to the Atlanta Street Railroad Compan
and for Other Purposes.

Be it ordained by the Mayor and Council of the City of Atlan

1st. That authority is hereby granted to the Atlanta Street Rai
road Company to construct street railways on any street in the cit
and across the bridge on Broad Street.

2. That so much of section two of the ordinance of Sept. 21, 186
as requires the company to flag between crossings, also section six
same date, requiring the company to macadamize the street for th
entire distance around the track, is repealed, and for the presen
said company is hereby required to do so in cases of necessity, to b
judged by the committee on streets.

3. The road, rolling and live stock of said company is hereb
exempted from taxation for the term of fifty years.

4. The charter for passage on said road shall not exce
170 twenty cents for any through line and not exceeding te
cents for half lines or short distances.

Resolution passed and adopted January 1, 1869, Book 5, pag
480.

For proceedings leading up to this ordinance see:
Council meetings December 18, 1868, Book 5, page 470.
" " " 28, 1868, " 5, " 473.

(EXHIBIT "L.")

Action of Council Approving the Merging of Certain Lines of Street Railroad Into the Atlanta Consolidated Railroad Company.

Petition.

To the Honorable Mayor and General Council of the City of Atlanta:

The petition of the Atlanta Consolidated Street Railway Co. shows that since the 20th day of May, 1891, its charter has been confirmed by the general assembly of Ga., and authority to purchase other street railroads has been given to it, and it has purchased all of the property and franchises of the following street railroad companies in Atlanta, Ga., to wit: The Atlanta Street Railroad Co., the West End and Atlanta Street Railroad Company, the Gate City Street Railroad Co., the Fulton County Street Railroad Company, and the Atlanta and Edgewood Street Railroad Company, it prays the consent of the Mayor and Council of Atlanta for it to operate said lines according to prior grants to said companies respectively. It claims that the right to do so already exists, but wishes to have its franchises free from any question or possibility of doubt.

ATLANTA CONSOLIDATED STREET
RAILWAY COMPANY,
By JOEL HURT,
President.

Resolution.

Whereas, the Atlanta Consolidated Street Railway Com-
171 pany has purchased the rights, property and franchises of the following street railroad companies in Atlanta, to wit: The Atlanta Street Railroad Company, the West End and Atlanta Street Railroad Company, the Gate City Street Railroad Company, the Fulton County Street Railroad Company, and the Atlanta and Edgewood Street Railroad Co.

Resolved, That the rights and franchises consented to and granted to said several street railroad companies and to said Atlanta Consolidated Street Railway Company in anticipation of such purchase, made by the Mayor and Council of the City of Atlanta on the 20 day of May, 1891, as appears by the minutes of the Mayor and Council on pages 683, 684, 685, 686 and approved by the mayor on May 20, 1891, and all subsequent grants made to either of said companies, are hereby reconsented and regranted to said Atlanta Consolidated Street Railway Company on the terms specified in the said grants and consents both as to privileges and obligations.

And the Mayor and Council of Atlanta consent that said Atlanta Consolidated Street Railroad Company may exercise upon and in the

streets of said city heretofore occupied by said companies respectiv all the rights and privileges heretofore owned or possessed by eit of said companies respectively, including the rights of extension any of said lines granted by the Mayor and Council of Atlanta said date in 1891, and subsequently thereto.

Provided, however, that nothing herein shall operate as an e tension of the time fixed within which anything was required to done on any of said lines as a condition to the right granted there to construct any street railroad, or part of the same on any str or streets.

Adopted December 7, 1891.

172 EXHIBIT "M."

Atlanta, Ga., March 11, 1912

By Special Committee Appointed to Negotiate with the Georg Railway & Power Company and the Georgia Railway and El tric Company.

Whereas, your committee have had under consideration an a justment of charges for electric current for light, heat and powe and have held several meetings, and negotiated with the represent tives of said two companies, which negotiations are set forth detail in the report of your committee attached hereto, and follo ing such negotiations, we believe that, if the following ordinan is passed, same will be accepted by the said companies, by reso tion properly and legally passed, and filed with the clerk of coun within fifteen days from the approval of said ordinance:

Therefore, be it ordained by the Mayor and General Council the City of Atlanta, as follows:

Section 1. That the city of Atlanta agrees that the Georgia Rai way and Power Company, subject to any existing franchises grant by the city to said companies, may absorb, by consolidation, com bination or merger, the following companies; Georgia Power Co Atlanta Power Company, Piedmont Power Company, Interst Power Co., Atlanta Hydro Electric Co., North Georgia Power C Atlanta Water and Electric Company, and lease the Georgia Rai way and Electric Company, subject to any existing franchis granted to the said company by the city of Atlanta, provided, how ever, that the Georgia Railway and Power Company may, at i option, surrender its franchise within the city of Atlanta or radius of seven miles from its center, and conduct its busine within said city and within said radius under the franchises, right and privileges, of the Georgia Railway and Electric Company, sub ject to the following conditions.

(*a*) That the percentage charged on gross receipts of the
173 Georgia Railway and Electric Company as now fixed and established by ordinance shall be maintained and preserve and a like percentage maintained and preserved on all extensio

made by or in the name of Georgia Railway and Electric Company, and furthermore, on all business done by the Georgia Railway and Power Company in addition to the business derived through the franchises of the Georgia Railway and Electric Company within a radius of seven miles of the center of the city and all other provisions of the ordinance of 1902, and amendments thereto relating to the grant to the Georgia Railway and Electric Company so far as applicable to the business hereafter done by the Georgia Railway and Power Company, as herein agreed, shall be applied and maintained.

(*b*) The Georgia Railway and Electric Company or the Georgia Railway and Power Company, whichever one is doing the business of furnishing electric current for light, heat and power purposes, agrees that the maximum rates to be charged persons or corporations for private or commercial purposes within the present or future limits of the city of Atlanta shall be for regular one year or longer term contracts for the regular supply of the entire electric current used in the premises, and subject to the monthly minimum charge, as follows, the maximum rate per K. W. for current for lighting purposes shall not exceed seven (7¢) cents net per K. W. hour after making the usual discount on monthly bills for payment on or before the tenth day of the month, and for current for exclusively power and heating purposes shall not exceed four and one half (4½¢) cents net per K. W. after making the usual discount on monthly, bills for payment on or before the tenth day of each month.

That the present minimum charge per month made by the Georgia Railway and Electric Company for lighting purposes of two ($2.00) dollars net shall be reduced to one ($1.00)
174 dollar net per month, and that the present minimum charge for power purposes made by the Georgia Railway and Electric Company shall be reduced to one ($1.00) dollar per month for motors up to two horse power and shall be reduced to fifty (50¢) cents net per horse power per month for the horse power capacity of the motor in excess of two horse power.

That the rates as above provided shall become effective not later than the first day of January, 1913, and shall become effective earlier than the said date in the event that the electric current from the Tallulah Falls development of the Georgia Railway & Power Company is ready to be supplied in the city of Atlanta at an earlier date than the said first day of January, 1913.

That the rates when made effective shall apply to all regular contracts with the Georgia Railway and Electric Company for the supplying of electric current in existence at the date when the said rates become effective hereafter provided said contracts were originally made for a period of one year or longer.

That the said new rates as above established shall not result in the increase of any classes of regular rates now in effect by the Georgia Railway and Electric Company.

(*c*) That the said company shall for the purpose of supplying electric current to a customer outside the underground district no located on its lines extend its overhead lines along the highway within the city of Atlanta without cost to the customer to an exten necessary to reach a point in front of the premises of the custome not to exceed an extension of two hundred (200) feet from th lines as existing at the time the application is made, that it will from the lines as existing or the lines as so extended, make th necessary service connection under the same rules as are now i effect with regard to such service connections. That is t
175 say, that regular overhead service connection will be mad without expense to the customer from overhead lines, pr vided it can be done without setting any additional poles for suc service connections between street lines and point at which curren is to be delivered.

(*d*) That the terms of the grants to the said Georgia Railwa and Electric Company and the Georgia Railway and Power Com pany and the several companies above named as being absorbed o taken over by the Georgia Railway and Power Company, shall no be interfered with by this grant, but same shall remain as now fixe and established by the ordinance of the city and the laws govern ing such franchises.

(*e*) The Georgia Railway & Electric Company or the Georgi Railway and Power Company, whichever is the active company i the city of Atlanta shall hereafter pay into the treasurer of th city of Atlanta a sum equal to the cost or charge for paving sixtee feet on all streets in the city of Atlanta on which said company o companies have double tracks and on which pavements or repave ments shall hereafter be laid, provided, that where said compan or companies have only a single track at the time of pavement o repavement only the cost of paving eleven feet of such streets, whe hereafter paved or repaired, shall be charged and collected. Wit reference to repairs, the present law shall be continued. The pro visions, of this section shall be enforcible only with reference t pavements upon streets where there is an assessment therefor. Th assessment against the street car company or the calculation of th amount due under this ordinance shall be based upon the propor tion of the entire cost of the pavement without regard to the differen character of pavements used. In the paving of streets with perma nent such as asphalt, bitulithic or similar pavements, joint pave ment shall be used between the street car tracks and eighteen
176 inches beyond the outside rail. This last provision not t apply where a street is paved with broken stone and chec or water bound macadam or similar pavement.

(*f*) The city's water supply from any site on Chattahoochee Rive shall in no way be interfered with by said companies or either o them or by any of their consolidated companies, in any way, eithe when the season is dry or when the season is wet.

(*g*) That all of the provisions of this ordinance shall apply to the limits of the city as now established or to the limits of the city as hereafter extended at any future time or times.

Section 2. This ordinance and the rights and privileges herein granted to said companies shall be maintained and established by the city in good faith so long as the said companies conform to and observe the conditions of this grant.

Section 3. That all ordinances and parts of ordinances in conflict with this ordinance be and the same are hereby repealed and this ordinance shall become effective upon the filing of resolution from the Georgia Railway and Electric Co. and the Georgia Railway & Power Company accepting the terms hereof with the clerk of council, provided same shall be filed within fifteen days from the date of the approval of this ordinance, and, in default of such filing, the provisions of this ordinance shall be of no avail.

Atlanta, Ga., April 20, 1912.

To the Honorable Mayor and General Council of the City of Atlanta:

In accordance with the ordinance of the Mayor and General Council of the city of Atlanta adopted by council on March 18, 1912, concurred in by the aldermanic board on March 18, 1912, and approved by the mayor on April 6, 1912, Georgia Railway and Electric Company and Georgia Railway & Power Company do
177 hereby accept the terms of the said ordinance. A certified copy of the resolution of the board of directors of Georgia Railway and Electric Company and a certified copy of the resolution of the board of directors of the Georgia Railway and Power Company authorizing this acceptance to be made are hereto attached. This acceptance and these resolutions are made in compliance with the requirements of section three of the said ordinance.

Yours very respectfully,

GEORGIA RAILWAY AND ELECTRIC COMPANY,

(Sd.) By G. W. BRINE,
Vice President.

(Sg.) PAUL D. REID,
Asst. Secy.

GEORGIA RAILWAY & POWER COMPANY,

(Sd.) By P. S. ARKWRIGHT,
President.

(Sg.) PAUL D. REID,
Asst. Secy.

Resolution of Directors of Georgia Railway and Electric Co.

On motion, duly seconded, the following resolution was unanimously adopted, to wit:

Resolved, that the action of the officers of this company in filing a written acceptance of the ordinance passed by the general council of the city of Atlanta, approved by the mayor with reference to the adjudgment of the lighting and power rates in the city of Atlanta, and other matters covered by the said ordinance be, and the same is hereby ratified, confirmed and adopted.

Resolution of directors of Georgia Railway & Power Company.

On motion, duly seconded, the following resolution was unanimously adopted, to wit:

Resolved, that the action of the officers of this company in filing
a written acceptance of the ordinance passed by the general
178 council of the city of Atlanta, approved by the mayor, with
reference to the adjustment of the lighting and power rates in the city of Atlanta and other matters covered by the said ordinance be, and the same is hereby ratified, confirmed and adopted.

"EXHIBIT (P)."

Text of Report.

The committee's report, which is signed by J. L. McCord as chairman, in which the railroad commission's decision is reviewed and criticised as unsound and unfortunate, follows:

"To the Mayor and City Council of Atlanta:

"The railroad commission of Georgia has announced its decision in the matter of increased rates and fares petitioned for by the Georgia Railway & Power Company and its subsidiaries. With reference thereto your committee reports as follows:

In its immediate results the decision (if disturbed) would mean increased rates for gas, hydro-electric power, and residence lighting and heating service in Atlanta, commercial lighting rates would be somewhat reduced. As to street railway fares in Atlanta, the railroad commission declines to assume jurisdiction because such fares are the subject of contract between the city and the company. Nevertheless the commission went outside the province and rendered an opinion in which the view is expressed that the street railway fare in Atlanta ought to be increased. The commission's conclusions on that subject are embodied in a recommendation to council that it amend the street railway franchise in Atlanta and authorize a 6 cent fare without charge for transfers.

"The increases in gas and electric rates that were specifically allowed would cost the company's patrons about $400,000 a year. Of that sum the city of Atlanta would be compelled to pay considerably more than it now pays for municipal electric service. Had the petitions been granted in full there would have resulted a total annual increase of more than $1,500,000 in revenue to the company. In its opinion the commission recognizes that during the year 1917 the company made more money than it had ever made before. Likewise the commission recognizes that in 1918 the company will make more than it made in 1917 (without any increased rates) although it is predicted that wage increases are to be expected in the future.

Despite such a showing the commission concluded that an emergency exists calling for still more revenue in order that the company might be aided in meeting its capital requirements. It is not suggested that such capital requirements pertain to the properties in the city of Atlanta. Apparently it is with reference to outside projects that the company requires some further financing.

Minimum Valuation.

From various sources the commission gathered information upon the basis of which it concluded that a "minimum" valuation of the company's physical properties and working capital in 1917 amount to $31,761,659. As to the properties outside Atlanta the commission reached its valuation conclusions largely upon its previous action with reference to stock and bond issue since 1912. Having in 1912 and subsequently, approved the scheme of organization of the power company and having given vitality to earlier projects taken over by that company, the commission evidently determined to adhere to its former conclusions and not go back on the plan of capitalization that it had once approved.

With reference to properties inside Atlanta, owned by the Georgia Railway and Electric Company, the commission largely rests its valuation conclusions upon the basis of an appraisal made in 1912 by an engineer employed by the company at the time it was endeavoring to secure approval by the commission of its consolidation plans. That appraisal was not introduced in evidence in this rate proceeding but was called for by the commission presumably after the evidence was closed. Your committee did not know of its existence until it was referred to by the commission in its opinion, and there has been no opportunity to inspect it or to cross examine the engineer who made it up.

But having thus arrived at what it terms a minimum" valuation of the company's properties, the commission finds that in 1917 the company nevertheless derived a return of 6.91 (nearly 7) per cent on such valuation, after deducting all operating expenses, taxes, and after making allowance for a depreciation reserve amounting to $777,256 in 1917 alone. Even such a return is deemed inadequate by the commission.

Beyond the Issue.

With reference to this matter of valuation of the company's pro
erties and the return derived thereon, it should be said that throug
out the case the power company insist that it was not asking a fa
return on what it deemed to be the value of its properties. T
reason for that attitude was that the company did not welcome th
delay that would have been involved had anything like a real valu
tion been undertaken. The commission therefore, went beyond th
issues in the case as made by the company itself and dr w on its ow
resources for the purpose of getting up what it terms a "minimum
valuation.

As to the distribution of the company's profits, the commissi
likewise took occasion to approve in terms the arrangement
which the power company has lease for nearly one thousand yea
all the properties of the Georgia Railway and Electric Compan

Under that lease the power company gets all the revenu
181 earned by the electric company and in turn pays all the e
penses, interest, taxes and other fixed charges, and in add
tion pays to the stockholders of the electric company an annual div
dend of 5 per cent on their preferred stock and 8 per cent on the
common stock. Such rental was held to be no more than prope
notwithstanding the water contained in the stock of the electric com
pany which, however, the commission seems to have ignored.

The commission gives the impression that your committee fu
nished no evidence at the hearing. Aside from the technical i
accuracy of that suggestion, attention is invited to the fact that aft
the power company had but in all its evidence counsel for your com
mittee desired sixty but urged the commission to grant them thir
days' time in which to analyze the company's evidence and prepa
their own. The commission declined that request and gave the com
mittee's attorneys only eighteen days' time. Nevertheless the com
mission consumed more than forty five days in arriving at its ow
conclusion and in promulgating its opinion.

On that subject it should likewise be said that throughout the ca
the power company consistently adopted an obstructive attitud
toward your committee and frustrated every effort on its part
produce information contained in the company's books and recor
The right to inspect such books and records was denied.

Most Unfortunate.

Altogether your committee has concluded that this decision of th
Georgia Railroad commission is a most unfortunate one, not onl
because of the specific increases allowed, but in addition because
the whole tenor and purport of the commission's attitude as reflecte

in its opinion. That opinion apparently ignores fundamenta
182 rights as between the public and the company in assumin
that those fundamental rights have in some way been affecte

by the existence of war; it assumes that the commission's authority has been enlarged without constitutional or legislative action, and manifests a spirit of benevolent according to which the commission assumes it is charged with the responsibility of developing water powers in Georgia by encouraging the investment of outside capital in such projects, thereby imposing on the people of Atlanta the burden of high rates in order that such outside projects may be fostered.

Your committee dislikes the necessity and duty of thus expressing such an unfavorable view concerning the commission's decision. It is nevertheless driven to the conclusion that the inevitable day has come when this issue must be fought out and settled now for all time. Your committee is conscious of the great benefits that inure from the development of water power projects throughout the State, but it is equally convinced that there are other ways to attain these purposes than to impose on the people the continual maintenance of high rates in order that the Atlanta properties may be exploited and made to bear the burden of providing funds for such other operations.

Your committee has diligently endeavored to protect the interests of the public and makes this report in order that you may determine what proceedings should be had and furnishing the means therefor.

Your committee makes the following recommendations:

1. Prior to September 1st, legal proceedings should be instituted to enjoin and prevent increases in gas, light and power rates, as well those charged to the public as to the city of Atlanta.

2. City Council should not authorize an increase in street car fares.

183 3. Should the company undertake legal proceedings to compel the railroad commission of Georgia to assume jurisdiction over street railway fares in Atlanta, the city's interests should be protected in such proceedings.

4. Your committee further recommends that steps be taken as soon as possible to procure a divorcement of the properties of the Georgia Railway and Power Company and those of the Georgia Railway and Electric Company. Such a course is demanded since otherwise it may be expected that the people will be called to continue to bear the burden of sustaining outside projects in which they have little or no interest directly.

Be it resolved by the mayor and general council. That the report of the committee appointed to consider and take action with reference to the question of increases in gas, electric light and power, street railway rates in Atlanta is approved, its recommendation adopted and the committee continued. Be it further

Resolved, That the committee in conference with the city attorney is empowered and direct- to institute such legal proceedings as may seem proper, having in view the prevention of increases in gas and electric light and power rates in Atlanta, the cancellation of the

opinion and order of the railroad commission, and be further em powered and directed likewise to represent the city's interests i sustaining the validity of the present franchises, fixing a 5 cent stre car fare in the city of Atlanta, and that said attorney and committe are directed likewise to take such steps as may seem proper, havin in view the institution of legal proceedings intended to divorce com pletely the ownership, operation and management of the Georgi Railway and Power Company and the Georgia Railway & Electr Company. It is further

Resolved. That said committee be authorized to associat
184 in behalf of the city such assistant counsel as may be deeme necessary and advisable."

Due and legal service of the within petition, rule nisi and proce acknowledged, copy received, copy, process, copy of process an service of same waived. All other and further service waived.

Aug. 24, 1918.

C. M. CANDLER.
GEO. HILLYER.
JNO. T. BOIFEUILLET.
PAUL B. TRAMMELL.
JAMES A. PERRY.

Filed in office this the 23 day of Aug. 1918.

S. T. CONYERS,
Deputy Clerk.

This case coming on to be heard upon the issues made by th pleadings, and after hearing the same it is considered, ordered an adjudged by the court that the mandamus prayed for be and th same hereby is denied.

October 2nd, 1918.

GEO. L. BELL,
Judge S. C. A. C.

GEORGIA,
Fulton County:

Fulton Superior Court, November Term, 1918.

No. 40900.

GEORGIA RAILWAY AND POWER CO.

v.

RAILROAD COMMISSION OF GA. et al.

Mandamus.

Now comes C. M. Candler, Geo. Hillyer, Paul B. Trammell, Jn T. Boifeuillet and J. A. Perry, railroad commissioners of the Sta of Georgia, defendants in the above stated case, by James K. Hine

pecial attorney for the railroad commission of Georgia, and demur to the petition in the above stated case, on the following
85 grounds, to wit:

1. Because no cause of action is set out in said petition.

2. Because plaintiff is not entitled to the writ of mandamus under he facts stated in said petition.

3. Because the railroad commission of Georgia is without power, uthority and jurisdiction to fix and establish rates for the Georgia Railway & Power Company in the municipalities named in said etition because the exercise of such power would impair valid subisting contracts between said municipalities and petitioner, and beause such action on the part of the defendants would have the effect f repealing the municipal ordinances, which are set out in the etition in said case.

4. Because under the proviso in section 5 of the act of Aug. 23d, 907, enlarging the jurisdiction of the commission, said proviso eing now contained in section 2662 of the Civil Code of Georgia, nd being as follows: "Provided, however, that nothing herein shall e construed to impair any valid subsisting contract now in existence etween any municipality and any such company; and provided, hat this section shall not operate as a repeal of any existing unicipal ordinance, "the railroad commission of Georgia can not nd has not the power, authority, and jurisdiction to fix passenger ares for petitioner in the municipalities of Atlanta, Decatur, Edgeood and College Park, under the contracts and ordinances referred o and set out in petition of said case.

JAMES K. HINES,
Special Atty. for the Railroad Commission of Georgia.

Filed in office this 13th day of September, 1918.

T. C. MILLER,
Deputy Clerk.

86 GEORGIA,
Fulton County:

Now comes Railroad Commission of Georgia, and C. M. Candler, Geo. Hillyer, Paul B. Trammell, Jno. T. Boifeuillet, and J. A. Perry, as Railroad Commissioners of said State, and as defendants in he above stated cause, by their attorney, Jas. K. Hines, and for nswer to the petition in said case say:

1. These defendants admit the allegations of paragraphs 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 16, (A), 16 (B), 16 (C), 18, 19, 20, 21, 23, 24, 25, 26, 28, 29, 33, 34, 35, 37, 38, 40, 43, 44, 45, 46, 47, 48, 50 and 52.

2. These defendants deny the allegations of paragraph 6 of said etition, except as herein qualified. These defendants submit that he railroad commission of Georgia is without power, authority and urisdiction to fix fares for applicant where such action would impair

valid subsisting contracts between the municipalities in which p
tioner operates its street railway lines and petitioner in existence
Aug. 23, 1907, or where such action would have the effect of
pealing ordinances which existed on August 23, 1907.

3. These defendants deny the allegations of paragraph 12 of s
petition.

4. These defendants deny the allegations of paragraph 16 of s
petition except as herein qualified.

5. These defendants admit the allegations of paragraph 17
said petition *as* except as herein qualified. The Rapid Transit
for a short period during a rate war sold three tickets for ten ce

6. These defendants deny the allegations of paragraphs 22, 30,
and 32 and 36 of said petition.

7. These defendants admit the allegations of paragraph 39
said petition, except as herein qualified. They deny that
franchise contract therein set out is indefinite.

187 8. From lack of information, these defendants can neith
admit nor deny the allegations of paragraph 41 of s
petition.

9. These defendants deny the allegations of paragraph 42 and
of said petition, except as herein qualified. They admit that und
the constitution and the laws of this State the power of fixing r
road fares is vested in the legislature except as limited in the cons
tution itself. Joel Hurt was the only witness who was sworn in
behalf of protestants, but the latter contended that applicant had n
made out a case of its evidence.

10. These defendants admit the allegations of paragraph 51
said petition, except as herein qualified. They deny that the co
mission has jurisdiction and authority to grant the increased str
railway fares, sought by petitioner.

11. These defendants deny the allegations of paragraphs 53 a
54 of said petition. From lack of information, these defendants c
neither admit nor deny the allegations of paragraph 55.

Wherefore, having fully answered said petition, these defendan
pray to be hence discharged with their reasonable costs in this behal
expended.

JAMES K. HINES,
Atty. for Defts.

GEORGIA,
Fulton County:

Before the undersigned, personally came C. M. Candler, who
oath deposes and says that he is one of the defendants in the abo
stated case, and is chairman of the railroad commission of Ga., an
that the facts stated in the foregoing answer are true.

C. M. CANDLER.

Sworn to and subscribed before me, this 3rd day of Sep., 1918.

J. P. WEBSTER,
N. P. at Large.

188 Filed in office this the 13th day of Sept., 1918.

T. C. MILLER,
Deputy Clerk.

GEORGIA,
Fulton County:

Be it remembered that at the September term, 1918, of the superior court of Fulton county, Ga., to wit, on September 19, 1918, there came on to be heard before said court His Honor Judge Geo. L. Bell, judge of said court, presiding, a certain cause, to wit, the petition of the Georgia Railway and Power Company against C. M. Candler, Geo. Hillyer, Paul B. Trammell, John T. Boifeullet and J. A. Perry, constituting the Railroad Commission of Ga., same being cause number 40,900, Fulton Superior Court, and being the hearing on the rule nisi on a petition to show cause why a mandamus absolute should not issue in behalf of the petition- against the defendants as prayed for in the petition, that said cause proceeded from day to day until Oct. 2nd, 1918, at which time His Honor, Judge Geo. L. Bell, rendered a decision in the cause overruling the prayers of the petition and refusing to grant a mandamus absolute as prayed in the petition, to which ruling and order, same being a final order in the cause said petition- then and there excepted and now excepts, and the petitioner says that His Honor Judge Geo. L. Bell erred as a matter of law in overruling said petition, and in denying said mandamus absolute as in the petition prayed, and that His Honor, Judge Geo. L. Bell, erred as a matter of law in not granting and ordering said mandamus on each and every ground alleged in the petition.

As evidence in the cause, it was agreed by all parties thereto that the facts in the cause were as stated in the petition and exhibited thereto, and that said petition and exhibits thereto did truly state the facts in the cause to be considered as evidence before the court
189 on said hearing, and it was further agreed by all parties to said cause that by mandamus was the proper procedure in the cause so stated to the court in open court.

The petitioner specifies as material to a clear understanding of the errors complained of the following parts of the record, to wit:

1. The original petition with all exhibits thereto, omitting entries of service.

2. Demurrer of defendants.

3. Answer of defendants.

4. Order of the court denying the mandamus absolute.

And now within the time required by law, comes said petitioner Georgia Railway & Power Company and tenders this its bill of exceptions and prays that the same may be signed and certified that the errors complained of may be reviewed and corrected.

KING AND SPALDING,
C. T. & L. C. AND J. L. HOPKINS,
BREWSTER, HOWELL AND HEYMAN,
COLQUITT AND CONYERS,
ROSSER, SLATON, PHILLIPS AND HOPKINS,
Attys. for Ga. Railway & Power Co., Plff's in Error.

I do certify that the foregoing bill of exceptions is true and contains all the evidence, and specifies all the record material to a clear understanding of the errors complained of, and the clerk of the superior court of Fulton county, Ga., is hereby ordered to make out a complete copy of such parts of the record in said case as are included in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the Supreme Court of Ga., that the errors alleged to have been committed may be considered and corrected.

This Oct. 2nd, 1918.

GEO. L. BELL,
Judge S. C. A. C.

190 Due and legal service of the within bill of exceptions acknowledged, copy and all other and further notice and service waived.

JAMES K. HINES,
Atty. for Defts. in Error.

This Oct. 2nd, 1918.

Filed in office this the 2nd day of Oct., 1918.

ARNOLD BROYLES,
Clerk.

Superior Court of Georgia.

Atlanta, March 15, 1919.

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

GEORGIA RY. & POWER CO.

v.

RAILROAD COMMISSION OF GA. et al.

This came before this court upon a writ of error from the superior court of Fulton county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed.

in so far as it denies the writ of mandamus requiring the Railroad Commission of Ga., to determine and fix the rate of fare on the line of railway of the company, plaintiff in error, from the City of College Park to the City of Atlanta, and one line from Decatur to Atlanta, and in so far as it denies the writ requiring the commission to take jurisdiction of the matter of transfers. Except in so far as is above indicated, the judgment of the court below is reversed because the court erred in denying the writ of mandamus. All the Justices concur, except Fish, C. J., dissenting in so far as the judgment is reversed, and Hill, J., dissenting in so far as the judgment is affirmed.

Bill of costs: $10.00.

191 Supreme Court of the State of Georgia.

Clerk's Office, Atlanta.

March 26, 1919.

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia, and that Georgia Ry. & Power Company paid the above bill of cost.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Z. D. HARRISON,
Clerk.

Fulton Superior Court.

No. —.

THE GA. RY. & POWER CO.

v.

C. M. CANDLER et al. and THE RAILROAD COMMISSION OF GA.

The remittitur in the above stated case having been sent down from the Supreme Court to the Superior Court of Fulton county, and now awaits the action of the superior court;

Now, therefore, it is considered, ordered and adjudged that the judgment of the Supreme Court in the above stated case, be and the same is hereby in each and every particular made the judgment of this the superior court;

And it is further considered, ordered and adjudged that, except as covered by the contracts between the Ga. Ry. & Power Co., and the cities of Decatur and College Park, it is the duty of the said Railroad Commission to fix the fares upon the lines of the railroad of the Ga. Ry. & Power Co., and to that end the writ of mandamus is hereby granted requiring the said commission to take the jurisdiction therein

as is directed and required in the opinion of the Supreme C
rendered in the above stated case.
This 26th day of March, 1919.

GEO. L. BELL,
Judge S. C. A. C

O. K.
JAS. K. HINES,
Special Atty.

192 Filed in office this the 26th day of March, 1919.
W. W. CLARKE,
Deputy Cler

(*Answer & Cross-bill.*)

GEORGIA,
Fulton County:

Now comes the Georgia Railway & Electric Company and
Georgia Railway & Power Company, the defendants named, and
answer to the petition filed in said case and by way of cross
allege—

1. Defendants admit the allegations of paragraphs 1 and 2.

2. Defendants deny the allegations of paragraph 3 as alleged
the petition. Defendants say that under the constitution and
of the State of Georgia they received and obtained their power
authority to construct and operate a street railway system from
State and that the plaintiff has and had no power or authority
confer such power upon defendants. Defendants received
franchises from the State of Georgia. Defendants admit that
tioner passed the ordinance or resolution as set out in Exhibit "A"
the petition.

3. Defendants deny the allegations of paragraph 4 as therein
leged. Defendants admit that Exhibit "B" was passed by petitio
(Exhibit "B" to petition.)

4. Defendants cannot, for want of sufficient information, eit
admit or deny the allegations of paragraph 5. Defendants ad
that the Georgia Railway & Power Company operates the railw
in question and that the lease or contract referred to in said pa
graph of the petition was executed and delivered in the year 191

5. In answer to the second paragraph of the petition (there be
two paragraphs of the petition numbered 5) defendants deny
allegations as therein alleged.

192½ 6. Defendants admit the allegations of paragraph 6
the petition.

7. Defendants deny the allegations of paragraph 7 of the petit

8. Defendants admit that 5 cents has been charged on cer
parts of the College Park line from College Park to Atlanta and

Atlanta to College Park, and 7 cents for all intermediate travel between College Park and Atlanta since the first day of October, 1920. Defendants say that it would now be charging 7 cents per passengers for patrons from Atlanta to College Park and 7 cents per passenger from College Park to Atlanta except for the restraining order granted in the present case. Defendants claim that they have a right to charge 7 cents per passenger for service from Atlanta to College Park and 7 cents per passenger for service from College Park to Atlanta, for the reasons hereinafter more fully set out in this answer and cross bill.

9. Defendants deny the allegations of paragraph 9 of the petition. Defendants admit that Exhibit "C" is a correct copy of what is known as general order 14. Defendants deny that the railroad commission of the State of Georgia had any right, power or authority to pass that order. Defendants say that general order 14 is not germane to the subject matter of the present suit.

Defendants say that the railroad commission of the State of Georgia in its order of September 22, 1920, did in so far as said commission itself considered that it had any power or authority with reference to fares on the College Park line fix the rate of fares to be charged all passengers riding upon said line at 7 cents per passenger. Among other things the commission's order of September 22, 1920, provided—

"Effective October 1, 1920, applicant is hereby authorized 193 to charge and collect as its maximum passenger fare the sum of seven (7) cents per passenger where a six (6) cent fare is now charged, for one continuous ride over and on its city and suburban lines of railway, or any zone thereof as now established, except such fares on the Main Decatur and College Park routes as are fixed by contracts between the company and the cities of Decatur and College Park held by the Supreme Court of Georgia to be valid contracts." Said order was the fixing of fares at 7 cents per passenger on said College Park line in so far as the commission itself held that it had jurisdiction to fix and regulate fares upon said line.

In said commission's order of September 22, 1920, the commission further held and declared:

"The five cent fares now in effect on the Main Decatur and College Park lines, contracted for under vastly different conditions than now exist, are not fairly compensatory, and as to the patrons of the company on other routes and on intermediate territory on these routes are discriminatory. This commission is without power to increase them."

Defendants further say and allege that if petitioner here claims the Georgia Railroad Commission has jurisdiction to fix or regulate fares on the entire College Park line and in so far as petitioner claims under any order of the commission with reference to the same, that such claim must not only be a recognition but must be an asserting of the commission's jurisdiction with reference to fares regarding

College Park traffic and that this court, being a court of equity should hold that petitioner is estopped from now on hereafter denying the jurisdiction of the commission to fix fares with reference to all patrons or passengers using said College Park line including College Park traffic or passengers.

194 10. Defendants admit the allegations of paragraph 10 of the petition. Defendants themselves claim the right, power and authority to discontinue transfer fares and privileges with reference to all passenger traffic over which the railroad commission has not been given jurisdiction and to discontinue transfer fares or privileges with reference to what is claimed and designated in the petition as College Park traffic.

11. Defendants admit the allegations of paragraph- 11, 12, 13 and 14 of the petition.

12. Defendants deny the allegations of paragraph 15 as alleged. Defendants say that the record and judgment in said case speaks for itself.

13. Defendants deny the allegations of paragraph 16 of the petition.

14. Defendants admit the allegations of paragraph 17 of the petition.

15. Defendants admit the allegations of paragraph 18 that on or about the 15th day of April, 1919, said Georgia Railway & Power Company filed with the Georgia Railroad Commission its petition to discontinue using free transfers on what is referred to in the petition as College Park traffic and defendants admit that petitioners appeared before the commission and resisted defendant's petition. Defendants say that the issuing of transfers entitles the person or passengers receiving a transfer to transfer from one car line operated by defendants to another and to ride on the second line without the payment of additional fare. Defendants operate 157 miles of track on different routes and over different streets in the corporate limits of the city of Atlanta. Defendants also operate a line from Atlanta to Hapeville a distance of 9.520 miles, said line branching off from what is known as the College Park line at Hapeville Junction and running thence 2.474 miles to Hapeville. Defendants also operate many suburban lines radiating from Atlanta in different di-
195 rections and running through many different townships and municipalities, these lines aggregating 212 miles of single track. Defendants show that any passenger or patron (other than what is called the College Park or Decatur traffic) using any of the said lines of defendants and desiring to transfer to any other line and ride upon such line are compelled and have to pay 7 cents as fare before they are entitled to a transfer. Defendants further show that any passenger riding or boarding any of the lines of defendants (other than College Park or Decatur traffic) and merely riding thereon without transfers are compelled and have to pay 7 cents per

passenger. The distance from College Park to Atlanta is 8.482 miles. To allow a passenger to board a car in College Park to pay 5 cents and ride from College Park to Atlanta and then have the right to demand a transfer, without the payment of additional fare, and in addition to riding from College Park to Atlanta to then board any of the cars on the other lines of defendants and ride upon the same when all other patrons boarding the College Park line at intermediate points between College Park and Atlanta, and passenger in Atlanta have to pay 7 cents for the right to receive or demand a transfer and have to pay 7 cents as fare to merely ride on the line to which the College Park traffic transfers, and where the fare on the line transferred to is itself fixed at 7 cents per passenger is illegal, discriminatory and unconstitutional and violates the constitutional provision of the State of Georgia as contained in section 6463, 6464 and 6467 hereinafter set out and more fully described. Defendants say that the allegations hereafter made with reference to illegal, discriminatory and unconstitutional rates with reference to College Park traffic also applies with reference to transfers demanded by and issued to such passengers.

196 Defendants deny that the railroad commission of the State of Georgia has any authority to compel defendant to issue transfers to College Park traffic, the commission holding that it has no jurisdiction to regulate fares with reference to said traffic and the issuing of transfers being part of the regulation with reference to fares.

Defendants admit that petitioner appeared before the railroad commission of the State of Georgia, insisting upon the jurisdiction of the commission with reference to requiring defendant to issue transfers to the College Park traffic, defendants say that petitioner not only insisted that the railroad commission had jurisdiction to compel defendants to issue transfers to College Park traffic, but now in its present petition claims all the benefits and advantages of the asserted jurisdiction of said commission with reference to such fares. Defendants say that in law, in justice and in equity petitioner cannot claim and assert the Georgia Railroad Commission has jurisdiction to compel and order defendant to issue transfers to College Park passengers and hold under the benefits of such asserted claim of jurisdiction on the part of the railroad commission, and then on the other hand in contravention of such claim assert that the Georgia Railroad Commission has no jurisdiction over the fixing of the fares with reference to College Park traffic. Defendants say and allege that petitioner's claim and assertion that the commission has jurisdiction with reference to College Park traffic so as to compel the defendants to issue transfers to College Park passengers estops petitioner from denying the jurisdiction of the commission to fix fares to be charged with reference to such traffic and passengers. Defendants assert that in law, in justice and in equity petitioner cannot at the same time claim that the commission has jurisdiction with reference to fares and assert, receive and hold all the benefits derived from

197 such asserted and claimed jurisdiction and then deny that the commission has jurisdiction to fix and regulate fares with

reference to the College Park traffic or passengers because of the claim of some so-called contract.

Defendants say and allege that petitioner's assertion of the commission's jurisdiction and its claim under the commission's orders as set out in the petition subject petitioner to the commission's jurisdiction with reference to all matters pertaining to the fixing of fares—be charged the College Park traffic or passengers.

16. Defendants deny the allegations of paragraph 19. Defendants say the commission did on September 22, 1920, pass an order, the material parts of which are attached to and made a part of this answer and cross bill and marked Exhibit "A".

16. Defendants admit the allegations of paragraph 20 of the petition.

17. Defendants deny the allegations of paragraph 21.

18. The allegations of paragraph 22 are denied. Defendants say that the plaintiff's claim made in this paragraph of the petition in so far as it claims that the Georgia Railroad Commission had or has jurisdiction over fares, or jurisdiction to pass orders with reference to fares to be charged College Park traffic, is an assertion by petitioner that the commission has jurisdiction to make orders with reference to and affecting the fares to be charged College Park passengers, and that such claim on the part of petitioner is not only an assertion of the commission's jurisdiction but is a submission to such jurisdiction, for petitioner cannot claim benefits under any purported order of the commission without not only an acquiescence, but also an assertion of jurisdiction on the part of the commission. For this reason defendants say that petitioner should be held by this court, a

198 court of equity, to be estopped from denying the power, authority and jurisdiction of the commission with reference to College Park traffic.

19. Defendants deny the allegations of paragraph 23 of the petition. Defendants say and allege that in this paragraph *of* the petition- seeks in judicio to claim certain rights under and by virtue of an order of the railroad commission of the State of Georgia in which order petitioner claims the commission itself fixed a charge of a five cents fare as to College Park, and to give free transfers as before practiced by said Power Company. For petitioner to claim under an order of the railroad commission petitioner must not only recognize and submit to the jurisdiction, but must also claim and assert the jurisdiction of the commission to pass such order, and such claim on the part of petitioner should be held to estop it from denying the commission's jurisdiction over or with reference to fares.

20. Defendants deny the allegations of paragraphs 24, 25, 26, 27 and 28 of the petition.

21. Defendants cannot for want of sufficient information either admit or deny the allegations of paragraphs 29 and 30 of the petition.

22. Defendants deny the allegations of paragraphs 31, 32, 33, 34, 35 and 36 of the petition.

23. Defendants cannot for want of sufficient information either admit or deny the allegations of paragraphs 37 and 38 of the petition.

24. Defendants allege paragraph- 39 and 40 of the petition do not require an answer.

25. Defendants deny the allegations of paragraphs 41, 42, 43, 44, 45 and 46 of the petition.

26. Defendants deny that petitioner is entitled to any of
199 the relief for which it prays.

For further answer and cross bill defendants allege:

27. What is known as the College Park street car line is a suburban railway running from Atlanta to College Park, a distance of 8.482 miles.

28. Said line was constructed and operated by virtue of the power and authority received from and conferred by the State of Georgia to defendants or its predecessors in title.

29. Said line runs from the corner of Broad and Alabama Streets in the City of Atlanta over various streets of said municipality and what was formerly West End, now a part of the City of Atlanta, to the limits of said city a distance of 4.576 miles, then over what is known as the East Point public road outside of any municipality thence to and through what formerly was the town of Oakland City and over the streets of said municipality, thence on the said East Point public road through Fort McPherson and to and through the town of East Point to the present northern limits of the town of College Park, a distance of 7.309 miles from said starting point in the city of Atlanta to said present northern limits of College Park, thence in College Park, the entire distance of the line being 8.482 miles, and running within the limits of College Park a distance of only 1,173 miles of the entire length of said line from Atlanta to College Park.

30. Defendants or their predecessors in title received consent from the city of Atlanta, the county of Fulton (with reference to the part of said line constructed through no municipality) Oakland City and East Point to construct the parts of said College Point line located within the respective limits of said municipalities and the county of Fulton. In 1901 petitioner consented to the construction of
200 said suburban street railway line in and through College Park and the said consent was subsequently transferred to the Georgia Railway & Electric Company, its successors and assigns, as shown by Exhibit "A" attached to the petition.

31. In the foregoing consent there was no stipulation regulation or provision of the so called contract with reference to fares. On to wit, November 6, 1905, petitioner passed an ordinance, said ordinance and the acceptance being attached to the petition as Exhibit "B." Among other things the said ordinance contained a provision as follows:

"That no greater fare than that of five cents for each passenger be charged for passage from the southern limits of said city of College Park to some central point in the city of Atlanta." Said provision is hereafter called the "so called contract provision."

32. Defendants allege and say that said so called contract provision is illegal, invalid and without force and effect; that said provision was never valid or legal, that if at any time it was binding, legal or valid, it is not now binding or legal; defendants further alleges and show that said so called contract provision has been terminated by defendants and is no longer enforcible as a contract provision if it ever had any binding effect; and defendants — cannot be enforced against them for the reasons heretofore set out and those hereafter to be stated.

33. Defendants allege that the fixing or regulation of rates or fares is a governmental or police function and that even in jurisdictions where the constitution of the State does not prevent the granting or abridging of the exercise of the police power and there is no inhibition against the granting of such power to a municipality, such grant of power or authority can only be and must be
201 conferred by express and explicit terms allowing of no other constitution. Defendants say that no such power or authority has ever been conferred upon petitioner by the legislature of the State of Georgia or by the constitution of the State of Georgia, that no power to regulate rates or fares has been conferred by this State upon petitioner and that petitioner has never possessed and does not now possess such power. Defendants further say that the power to contract with reference to fares or rates cannot be inferred even if a municipality is given express authority with reference to regulation and that even the power to regulate with reference to fares or rates does not confer any power or authority upon any municipality in this State to make a contract with reference thereto. Defendants allege and show that no power or authority has ever been conferred by this State, by the legislature or constitution of this State, upon petitioner to contract with reference to fares, and defendants allege that petitioner does not now and has never possessed any such power. Defendants say that for the reasons stated defendants had no right, power or authority to fix fares or to enter into said so called contract provision and that said provision is therefore ultra vires and void.

34. Defendants allege and show that the so called contract provision was not an attempt on the part of petitioner to regulate fares or to contract with reference to fares to be charged within its municipal limits, but was an undertaking on the part of petitioner to fi

fares to be charged for passenger service in and through other municipalities and wholly without its territorial limits. As heretofore alleged and shown the College Park line is an interurban line and runs nearly entirely in and through municipalities other than petitioner; defendants allege that the State of Georgia, neither
202 through its legislature nor through its constitution or otherwise had conferred upon petitioner any power or authority to regulate or contract with reference to fares or rates of fares to be charged by an interurban or street railway company for travel outside of the territorial limits of petitioner; that petitioner and said municipality does not and has never possessed such power and that no such authority had ever been conferred upon it, and for this reason the so called contract provision is ultra vires and void and beyond the power or authority of petitioner to make.

35. Defendants further say that the constitution of the State of Georgia as contained in section 6464 expressly prohibits the abridgement of the police power and among other things provides—"The exercise of the police power of the State shall never be abridged, nor so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals or the general well being of the State."

Defendants allege that said provision is a constitutional inhibition against petitioner making rate or fare contracts, for as heretofore alleged the fixing or contracting with reference to rates or fares is a governmental or police power and the so called contract provision violates said constitutional provision and is, therefore, illegal, unconstitutional and void and cannot be enforced as a legal valid or binding contract provision.

36. Defendants say that it does not serve a public purpose for a municipality to fix rates or fares to and from other municipalities, such fixing of rates or fares is not germane to the public purpose for which petitioner was created and for which petitioner exists. The fixing of interurban rates or fares is a legislative and not a municipal function, the fixing of fares by a municipality upon any part
203 of an interurban line without the territorial limits of such municipality is a legislative and not a municipal function, and such power or authority must be exercised for the general well being of the State and the interest of the public and not in the interest of any particular municipality. By the so called contract provision petitioner does not undertake to regulate or make a contract with reference to the rate of fare to be charged within its municipal limits, but undertakes to contract with reference to fares to be charged on said College Park line running through the municipality of Atlanta, Oakland City, East Point and the public thoroughfares of Fulton county. Defendants allege and show that it is against the public policy of this State and the general well being of this State for any municipality to fix rates, fares or to make rate contracts having extra municipal effect and that for this reason said so called contract provision is illegal and invalid. Defendants further show that

to permit the operation or to give effect or force to said so called contract provision would cause inequality and conflict between different municipalities and would cause discrimination not only in conflict with and contrary to public policy of this State but also in conflict and in contravention of the provision of the constitution of this State as contained in section 6464 of the code of the State of Ga., providing that the exercise of the police power of this State shall never be abridged, nor so constructed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals, or the general well being of the State.

Defendants say that the so called contract provision heretofore referred to is illegal, void and unconstitutional and in conflict with said constitutional provision.

37. Defendants say that the so called contract provision
204 does not undertake to fix the fares to be charged from Atlanta to College Park, but only undertakes to fix the fare to be charged "from the southern limits of said city of College Park to some central point in the city of Atlanta." For this reason defendants say that there is not even any so called contract provision which prevents defendants from charging 7 cents fare from the city of Atlanta to College Park. Defendants further say that said so called contract provision if given any force and effect as a contract being a contract with reference to the abridging of the exercise of the police power must be literally construed. Defendants say that said contract does not provide that a 5 cents fare shall be charged from College Park to the city of Atlanta, but merely from a designated point to wit, the southern limits of said city. Defendants say that there is a difference in the feasibility of collecting different fares on said line from Atlanta to College Park than from College Park to Atlanta and a difference in the feasibility of collecting fares from the southern limits of College Park than from other points in College Park coming into the city of Atlanta. In going from Atlanta to College Park defendants charge seven cents for all intermediate points between Atlanta and College Park. Defendant's method of taking up fares is on boarding the cars on pay as you enter cars and on non pay as you enter cars soon after the passengers have boarded the car. Great fraud can be perpetuated upon defendants by passengers on said line when defendants' agents undertake to collect fares by merely claiming that they are going to ride the whole length of the line and not disembark at some intermediate point, thus making the conductor collect a five cents fare instead of the legal rate of fare to be charged, 7 cents. Defendants show that even if the so called contract provision is given full force or effect it can not apply to
205 passenger service from Atlanta to College Park. Defendants also show that there is a distinction between the collecting of fares from the line, and the collecting of fares after the car has left said terminus and is on its journey to Atlanta.

For all passengers who board the car of defendant- after the northern limit of College Park has been passed, there is no contention, but

what defendants have the right to charge such passenger 7 cents. Defendants show that there is no contract provision with reference to what fares should be charged from any part of College Park except from the southern limits of said town. Defendants show that there is no contract provision which provided that passengers boarding defendenats' cars at other points in College Park should not pay the same fare as passengers at intermediate points between the northern limits of College Park and the city of Atlanta, and that if said so called contract provision is to be given force and effect it merely relates to passengers from the southern limits of said town, and not from any points within said town. Since the execution of the so called contract provision the limits of petitioner have been extended 780 feet further north. Said so called contract provision cannot be held to apply to said added territory.

38. Defendants say that said so called contract provision is indefinite with reference to the parties for whom petitioner claims or may claim said provision was entered into or executed, and because of this indefiniteness said provision is incapable of enforcement or performance. As heretofore shown said so called contract provision is not with reference to travel within the corporate limits of petitioner. Said provision furthermore does not purport to be made or entered into for the benefit of any particular person or persons or for
206 the benefit of citizens or residents of petitioner; it does not purport to have been made for the residents of petitioner at the time of its execution; it does not purport to have been made for the residents or citizens of petitioner at the present time.

Defendants say that petitioner even if it had the right to enter into contracts for its citizens with reference to rates of fares, defendants deny that any power or authority was conferred upon petitioner to enter into so called contract provision for the public generally, and because of such indefiniteness the said provision cannot be held to be a contract. At the time of the execution of the said so called contract provision College Park was by the 1900 census a municipality of 517 inhabitants. The 1920 census gave it a population of 3,662 inhabitants. As heretofore shown said contract does not purport to have been made for the inhabitants of petitioner at the time the provision was executed or for its inhabitants at the present time. Since the execution of the so called contract provision a street or suburban street railway company, other than defendants, has built a street railway, from College Park to Fairburn, a distance of approximately ten miles. Said line is divided into four zones, each zone being 2½ miles in length and passengers riding upon said line are charged 7 cents per passenger for riding through each of said zones or any part thereof. Persons and people living at Fairburn or intermediate points between Fairburn and College Park are brought on said interurban line to College Park and claim the right, because of said so-called contract provision, to ride over defendant's line from College Park to Atlanta, a distance of 8.482 miles for 5 cents; and in addition to this, claim a right to demand and receive transfers entitling them

to ride over any of *of* the other lines of defendant operated
207 in the city of Atlanta or adjacent or surrounding munici-
palities in and through which defendant's lines run. De-
fendants show that this is an entirely changed condition since the
time of the execution of said so called contract provision; that the
said so-called contract provision is so indefinite with reference to the
parties for which it was made that it cannot be enforced as a valid
contract for petitioner had no right to contract for the benefit of
parties living in different counties and in other and different localities
from petitioner's territorial limits.

39. Defendants show and allege that said so-called contract provi-
ion is indefinite as to the time it is to run, and said provision contains
no definite or fixed time during which a fare of 5 cents is to be
charged and because of said indefiniteness said so-called contract pro-
vision is revokable on notice, and as shown by Exhibit "E" attached
to the petition defendants have served notice on petitioner terminat-
ing said contract on the 20th day of October, 1920, and said so-called
contract if it ever had any force and effect is now terminated.

40. Defendants further allege that provisions or contracts with
reference to rates or fare being with reference to a legislative or
police power, even when expressly permitted, must be for a definite
term not grossly unreasonable and that where the provisions as to
rates are indefinite it is revokable on notice under changed conditions.
Defendants say that there have been numberless changed conditions
as heretofore set out, in this answer and as hereinafter detailed. De-
fendants say that the costs of material entering into the upkeep of
said line, the costs of labor and the furnishing of the service to the
passengers has greatly increased and changed since said contract was
entered into. Defendants say that the railroad commission of
208 the State of Georgia in its order of September 22, 1920 ex-
pressly stated and held: "The five cent fares now in effect on
the Main Decatur and College Park lines, contracted for under vastly
different conditions than now exist, are not fairly compensatory, and
as to the patrons of the company on other routes, and on intermediate
territory on these routes, are discriminatory." Defendants say that
this is a holding and finding of the commission itself that there has
been changed conditions vastly different from those existing at the
time of the entering into of said so-called contract provision. De-
fendants further show that not only have there been such changed
conditions but that the railroad commission of the State of Georgia
claims that it has the right to fix service on said line and in its said
order of September 22, 1920, ordered and declared that defendant
must increase its service on said College Park line and that on said
College Park line defendant shall operate trailers on all schedules
during rush hours. Defendants say that this order of the commis-
sion, increasing the service on said College Park line, in and of itself
is a changed condition and all of said changed conditions authorize
the cancellation of said so-called contract provisions and as shown
— Exhibit "E" attached to said petition said contract is no longer en-
forcible, but should be held to be revoked and terminated.

41. Defendants further allege that the so-called contract provis-
n is with reference to a public duty placed upon defendants as a
uasi public corporation, but for defendants to continue to carry out
id provision and charge 5 cents hampers defendants in the dis-
harge of their duties to the public. Defendants owe a duty to serve
e public equally and without discrimination. On intermediate
oints between College Park and Atlanta, on the College Park line, a
fare of 7 cents is charged, said passengers securing less service
00 than that afforded to what is called the College Park traffic.
Defendants say that to continue said so-called contract provis-
n, indefinite in time, in force at the present time would be an inter-
erence and an infringement of the public duty which defendants
re to their other patrons; defendants cannot be forced to operate
eir property for the public at noncompensatory rates, the charge of
cents to College Park traffic is confiscatory and not compensatory,
fact, and as held by the railroad commission of the State of Ga.,
at for defendants to continue said "so-called contract provision" in
rce and effect, would place a large burden upon other patrons of
efendants and for these reasons defendants were justified in termi-
ating said so-called contract provision.

42. Defendants further show and allege that it was and is beyond
e legal and constitutional power of defendants to make a binding
ntract with reference to fares, such as the so-called contract pro-
ision, and that said provision was ultra vires of any power or au-
ority of defendants to enter into same and therefore void. De-
ndants are quasi public corporations and cannot legally make or
ter into any contracts or agreements contrary to public policy or
ntract or agreement which interfere with or in any way impair its
ties as such quasi public corporations or effect its duties towards
her individuals or municipalities or other patrons of its line; or
se a difference with reference to its public duties and to its con-
ct obligation. Defendants owe public duties to other munici-
lities and to other patrons of its line in conflict with said "so-
lled contract provision." It is ultra vires of defendant's power to
ke a contract with one municipality to haul passengers from it
and through other municipalities at a different rate of fares than
is or may be charged for passenger service in said other mu-
00 nicipalities; all such contract or contract provisions would be
against the public policy of this State and are ultra vires.
efendants further say that section 6447 of the constitution of the
ate of Georgia prohibits and forbids the defendants from making
y contract which would directly or indirectly give a rebate or
nus in favor of any particular individual, any particular locality
any particular municipality. That to carry out the provisions of
id so-called contract would be giving to petitioner a rebate, a bonus
d a discrimination and for said reasons said so-called contract pro-
ion is unconstitutional and void as being in violation of section
67 and in violation of sec. 6463 prohibiting unjust discrimination.

43. Defendants show and allege that on the 22nd day of Septem-
, 1920, the railroad commission of the State of Georgia fixed the

rates of fares for all passengers riding on College Park line wit
the city of Atlanta at 7 cents, for all passengers riding on s
line within the limits of Oakland City 7 cents, for all passeng
riding on said line within the limits of East Point 7 cents, for
passengers riding on said line from Atlanta to the northern li
of College Park and all intermediate points at 7 cents. Defend
show that this action of the commission was the action of the S
of Georgia and has the force and effect of a legislative statute
acted by the legislature and approved by the governor of this S
Defendants say that this action of the State nullifies all rates
fare to be charged on said College Park line in conflict with sa
cents rate of fare as fixed by the commission and that said rat
fares as fixed by the commission nullifies any rate of fare on
College Park line outside of the municipal limits of petitioner.
fendants say that until the commission made its action
211 1918, and its further action fixing rates of fare on said
lege Park line at 6 cents and the action of September
1920, fixing the rate of fare on said College Park line at 7 cents
State of Georgia had not taken jurisdiction over said College P
line and that the fare over all lines of the defendant had been
1918 five cents. Defendants say that at the time of the actio
the Supreme Court of Georgia in the case of Georgia Railw
Power Company v. Railroad Commission of Georgia, the State
not taken such jurisdiction over any part of said College Park
or fixed a rate of fare on said line different from that set out or
vided in said so-called contract provision, but that said action o
State was taken after the rendition of the decision by the Supr
Court of Ga. in said case. Since the rendition of said decision
State has acted as heretofore set out. Defendants say that the S
action is in conflict with said so-called contract provision, at
so far as the same effects the College Park line outside of the
ritorial limits of petitioner and defendants say and allege that
action of the State itself automatically suspends and sets aside
so-called contract provision in so far as the same applied to
College Park line outside of the limits of petitioner.

Defendants say that the rendition of the decision of the Supr
Court does not act as an estoppel for the reason that petitioner
not a party to said suit and for the further reason that in said
the Supreme Court expressly recognized that if the State exer
its police power then the so-called contract provision would be
and void.

44. Defendants say and allege that the railroad commission o
State of Ga. is given no right, power or authority to itself de
or set aside contracts or so-called contract provisions
212 reference to fares. That if it be held that the action o
commission of and in itself in fixing the rates on
College Park line did not render said so-called contract prov
null and void, unconstitutional and unenforcible that then
court as a court of equity must exercise its jurisdiction and
hold that said contract is illegal, void, discriminatory and un

tutional and enjoin the enforcement of said so-called contract pro-sion and defendants allege and claim that a public duty rests upon not to carry out said illegal, void and unconstitutional provision.

45. Defendants say that to charge a passenger 7 cents to ride on d College Park line within the corporate limits of Atlanta or to d from Atlanta and Oakland City or to and from Atlanta and st Point or to and from Atlanta and the northern limits of Col-ge Park and all intermediate points and then only charge 5 cents r a ride from College Park to Atlanta and issue transfers to such ssengers paying 5 cents giving them the privilege to ride on all her lines of defendants in the city of Atlanta or running in ter-ory adjacent to Atlanta when a fare of 7 cents is charged on such her lines is discriminatory. Defendants say that to charge 5 cents what is known as College Park traffic, places an additional burden on other municipalities and localities and upon other patrons of fendants, for such other localities or patrons may be compelled to nd a greater increase than would otherwise be required if the e of fare as to the College Park traffic be increased with reference the facilities afforded such traffic. Defendants say that the State Ga., through its railroad commission has fixed the rate of fare said College Park line, except with reference to what is known as College Park traffic at 7 cents and defendants say that such fixing of fare on said College Park line renders the rate in said so-called contract provision, discriminatory, illegal, un-nstitutional and void and that said so-called contract provision is ecially illegal and unconstitutional with reference to all traffic said line outside of and beyond the municipal limits of College rk. Defendants say that the public policy of the State of Ga., enunciated by the acts of the legislature of this State and as set t and expressed in its constitutional provision declare and make discriminatory fare contracts, rebates or bonuses directly or in-ectly granted, which have arisen by virtue of any device or con-ct entered into since the adoption of the constitution of 1877 d and defendants say that said so called contract provision is now conflict with said public policy of the State of Ga., and is for s reason null and void.

46. Defendants say that to give force and effect to the said action the commission fixing a 7 cents fare on said College Park line d to give force and effect to said so-called contract provision would to produce on the same line and over the same section of the e two entirely separate and distinct rates of fare, the smaller fare ng charged for the longer haul and the greater service and the ater fare being charged for the lesser service and the shorter ul, and that to carry out the enforcement of such two rates of fare uld be contrary and detrimental to the public interest, peace and nquillity and in conflict with the general well being of the State d an infringement of the equal rights of individuals.

47. Defendants say that if said so-called contract provision was id and enforcible at the time it was made and was then valid

and enforcible with reference to the entire College Park line beyo
its corporate limits; still said so-called contract provision must n
yield to the State's action in fixing the rates of fare for
214 points from the northern limits of College Park over s
College Park line at a 7 cents fare and that all passeng
now hauled over said part of College Park line must be charg
at the rate of 7 cents.

48. Defendants further show that the said so-called contract p
vision is illegal void and unconstitutional because the same is
conflict with constitutional provisions of the State of Ga., prohibiti
discrimination of any kind or *charter* with reference to service
defendants. Defendants say that such constitutional provision ma
it unlawful and unconstitutional for defendants to collect less
travel over the entire College Park line the longest haul that
charged for intermediate points between Atlanta and College Pa
Defendants say that the constitution of the State of Ga., as set ou
section 6463 of the code prohibits unjust discrimination by railro
companies; that said State constitutional provision as contained
section 6464 prohibits corporations from conducting their busine
in such manner as to infringe the equal rights of individuals, or t
general well being of the State, and section 6467 prohibits defen
ants from giving or paying any rebate or bonus in the nature there
directly or indirectly, and defendants say each of said provisions
said constitution renders said so-called contract provision illegal a
void, as now being in conflict therewith.

Defendants further say that in carrying out said constitution
provisions the legislature of the State of Ga. has passed and enac
laws declaring discrimination of any kind or character illegal a
void and that said so-called contract provision is not in conflict w
said laws as enacted by the general assembly of this State and i
this reason said so-called contract provision is now illegal and void.

49. Defendants say that the railroad commission of th
215 State of Ga., in its order of September 22nd, 1920, expres
held: That the so called contract is now discriminatory, s
commission further held that it had no power over such discrimin
tory contracts and this court must assume jurisdiction and decla
said contract illegal, unconstitutional and void as being discrimi
tory.

50. Defendants say that the railroad commission of the State
Ga. claims and it had assumed jurisdiction over defendants w
reference to the fixing and regulation of service on the College Pa
line and with reference to College Park traffic. Defendants say th
the commission has for some time regulated the number of cars a
required this defendant to put on additional service to that furnish
by defendants at the time of entering into the so called contract p
vision heretofore set out. Defendants say that at the time of en
ing into said so called contract provision the service furnished
defendants to petitioner amount- to wit: — six cars per hour. Und
the orders of the railroad commission of Ga. and under its sup

ision the present service on said line amounts to twelve cars per our. Defendants further say that in the commission's order of eptember 22, 1920, the said commission's order provides that de- endants, as early as practicable and within 6 months from Oct. 1, 920, should operate trailers on its College Park route on each sched- le now operating during the morning and afternoon rush hours as ow established to wit, during the hours of 6.30 to 9.00 (approxi- nately) in the morning and 4.45 to 7.15 (approximately) in the fternoon. Defendants say that the commission itself in its said rder of September 22, 1920, states that to perform the present ervice on said College Park line under a 5 cent fare is not fairly ompensatory. Defendants say that said action of the commission in ordering defendants to increase their service, if the com- 16 mission has power to make such order, is an order by the State of Georgia and is an order, which together with its other rders on said line makes the additional service rendered on said line onfiscatory and that if the law gives such power to the commission nd such orders are valid, the said contract provision for a 5 cent are with said increased service will amount to confiscation of de- endants' property without compensation, without due process of law nd would deprive the defendants of the equal protection of the law contravention of the 14th amendment of the constitution of the nited States found in Georgia Code, Section 6700, and contrary to e constitution of the State of Ga. as found in section- 6358 and 359. Defendants say that said action of the commission requiring ncreased service on said College Park line from time to time and its id order of September 22, 1920, are not acts or contracts on the rt of these defendants, but were acts on the part of the State of a., and that said action sets aside and abrogates the so-called con- act provision, because said orders make said contract provision onfiscatory.

Defendants say that complying with said orders of the commission as made the costs per passenger with reference to said College Park affic amount to, to wit, at least the cost of 13.957 cents per passenger ithout regard to any return on the value of the property of de- ndants actually used in the public service. Defendants say that ther the railroad commission of the State of Ga., has no power or uthority to increase the service which increase of service will require n increase in excess of that procured by the so-called contract pro- ision or the increase of said service abrogates and sets aside said o-called contract provision because the action of the State through s legislative regulatory body as to service has made said so-called ntract provision confiscatory, illegal and unconstitutional.

17 51. Defendants further say that petitioner is estopped from making the contention that the railroad commission of the ate of Ga. no longer has any power or authority to fix rates of fare r College Park traffic because of any so-called contract provision. efendant- say that under the law of the State of Ga. and constitution the United States and the State of Ga., as just heretofore set out, e railroad commission of the State of Ga., cannot have authority

to order changes or additions to defendants' service, while it has no power or authority to increase the fare to a point which will pay for the additions and changes in service and provide a reasonable return upon the value of the property used in performing said service, and that if petitioner invokes the jurisdiction, power or authority of the commission to require the defendant- to perform such service then petitioner is estopped from denying the right, power and authority of the commission to fix legal, valid and compensatory rates for such service.

Defendants say that on the 5th day of February, 1917, petitioner by formal action of its mayor and general council requested the railroad commission of the State of Ga. to regulate service on said College Park line and with reference to College Park traffic, a copy of which resolution and action of petitioner is hereto set out marked Exhibit "B" and made a part of this answer.

Defendants say that said action of the petitioner estops petitioner from claiming the benefit of any so called contract provision, fixing the rate of fares, for petitioner has requested the commission of the State of Georgia to take jurisdiction of the regulation of defendants with reference to College Park service, and that such jurisdiction cannot be invoked by petitioner and at the same time deny the power and authority of the commission to increase the rates of fare

to the extent necessary to yield the required expense for performing such service and a reasonable average return upon
218 the value of the property of defendants actually used in performing such service, for *it* petitioner undertook to get the benefits of the jurisdiction of the railroad commission with reference to the regulation of service which jurisdiction it asserts it would have the action of petitioner which would cause a confiscation of defendants' property in violation and in contravention of the constitution of the State of Ga., as set out in section 6358 of the code and the 14th amendment of the constitution of the United States as set out in section 6700. Defendants further say that the original petition of plaintiff, as heretofore set out in this answer, invoked, prayed and asserted the jurisdiction of the commission with reference to issuing transfers to College Park traffic and such action on the part of the petitioner estops it from denying the right of the railroad commission to fix fares with reference to said College Park traffic which will not be confiscatory as has been declared to be a fact by the commission itself in its order of Sept. 22, 1920.

52. It is claimed by petitioner and by the railroad commission of the State of Georgia that by virtue of the acts of 1907, page 73 et seq. said commission is given jurisdiction over defendants with reference to service and equipment of said company used in connection with the College Park traffic and that said commission can require these defendants by its orders to make such changes and additions to such service as said commission requires and it is contended by petitioner that said commission though given this power to regulate service has been given no power or authority to increase the rates of fare with reference to said College Park service to the extent

ecessary to yield even the required expense of such service. Defendants say that if the said act of the legislature is given
19 such construction that said act is now confiscatory, unconstitutional and void. Defendants say that complying with he orders of the railroad commission with reference to service, the xpense of service per passenger with reference to College Park affic is at least 13.957 cents. Defendants further say that the ommission itself in its order of September 22, 1920, has itself exressly held and stated that under the so-called contract provisions he service with reference to said College Park traffic is not fairly ompensatory and such ruling was made with reference to the then xisting service required by the commission without consideration of he extra service required by said order to be performed by the deendants within 6 months after Oct. 1, 1920. Defendants say that nder the present state of facts that any legislative act which deives the commission of the power to increase the rate of fare but rants it right, power and authority to increase service to such an xtent that such increased service will require an income in excess f that produced by any rate of fares protected by said act would ake the said act of the legislature confiscatory, illegal and void and n contravention of the constitution of the State of Ga., as set out in ection 6358 and 6359, and the 14th amendment of the constitution f the United States as set out in sec. 6700 of the Georgia Code of 910, providing for the equal protection of the law and providing hat no person shall be deprived of life, liberty or property without ue process of law, and defendants say that either said act of 1907 void for the reason aforesaid, or the exception to said act proiding "nothing therein shall be construed to impair any valid, substing contract now in existence between any municipality and any uch company, and provided this act shall not operate as a repeal of any existing municipal ordinance," is illegal, void and un-
20 constitutional, for the reasons just stated, and defendants attack said exception.

53. Defendants further say that if the so-called contract provision held to come within the exception of the act of 1907, page 73 et eq. which exception provides: "That nothing herein shall be conrued to impair any valid, subsisting contract now in existence beween any municipality and any such company, and provided that his act shall not operate as a repeal of any existing municipal rdinance," then said exception of said act is in*a*valid and uncondtutional, for the additional reasons hereinafter set out. Defendnts say that said act purports and does give to the commission urisdiction over rate contracts between street railway companies and rivate persons and over all contracts between municipalities and treet railway companies except those made prior to 1907. Said act ives the commission jurisdiction over all rate contracts contained so-called consent franchise contracts between a municipality and street railway company entered into subsequently to 1907. Dendants say that there is no legal, just or distinguishing classificaon between so-called franchise contracts made prior to 1907 con-

taining rate provisions for service to private patrons claimed to be excepted from the commission's jurisdiction and contracts entered into between the parties themselves for similar service, and to place contracts entered into by parties themselves for similar service under the commission's jurisdiction and not to place contracts entered into by municipalities for such patrons under the commission's jurisdiction is not a legal classification but creates discrimination. Defendants further say that there is no legal distinction and separate classification between so-called contracts made prior to 1907 and those made subsequent thereto. Defendants say that private con-
221 tracts entered into between private parties and defendants or with a street railway company with reference to service are held subject to the commission's jurisdiction and that to hold them subject to the commission's jurisdiction and to exclude from the commission's jurisdiction contracts made by a municipality for the benefit of private patrons is discriminatory and unconstitutional and makes such excepting clause contravene the constitution of the State of Ga. as contained in section- 6358 and 6359 and the 14th amendment of the constitution of the United States as contained in section 6700 insuring to parties due process of law and the equal protection of the law.

Defendants further say that the acts of 1907 page 73 et seq. conferred power upon the railroad commission of Ga. to fix rates of fare and regulate rates in all cases except that nothing herein shall be construed to impair any valid, subsisting contract now in existence between any municipality and any such company, and provided that this act shall not operate as a repeal of any existing municipal ordinance. Defendants say that by virtue of such power and authority the railroad commission has acted and fixed rates of fares to be charged by defendants as heretofore shown at 7 cents per passenger. Defendants say that if said exception to said act was a recognition of a 5 cents rate of fare with reference to College Park traffic that that said legislative act itself or said exception contained in the act is now void and unconstitutional because the same is discriminatory and violates the inhibitions of the constitution of the State of Ga., forbidding discrimination as contained in section- 6463 and 6465 forbidding a corporation to conduct their business in such a manner as to infringe the equal rights of individuals, or the general well being of the State, and section 6467 forbidding rebates and is also a
222 violation of section 6469 which is a mandate upon the general assembly of the State of Georgia to carry out the provisions against discrimination and any action or exception to an act which tended to produce or create discrimination would become unconstitutional whenever said discrimination came into existence.

54. Defendants show to the court the following facts and allege if the court should hold that the so called contract provision is a valid binding contract and that defendant cannot charge more than 5 cents per passenger for what is known as the College Park traffic defendants say that the performance of such contract would require defendants to perform the service at less than cost of such

ervice and defendants would not receive any return whatever upon the value of their property employed in carrying out such service. Defendants say that the costs of hauling passengers on the College Park line from College Park to Atlanta amounts at least to 13.957 ents and hauling the College Park passengers for any average istance on said College Park line costs much over the amount of 5 cents per passenger for any reasonable distance, that the cost of auling College Park passengers from College Park to Atlanta and iving them transfers would increase the service costs to something ver 13.957 cents per passenger.

Defendants say that constitutionally and legally they cannot be equired to continue to perform said confiscatory contract. That efendants are public utility corporation incorporated for the purpose f serving the public and that the future fulfilling of said contract rovision, if it is held to be legal and binding would interfere with efendants' service to its other patrons and that said contract would n a large measure disable the corporation from performing its legal duties to the public. If it be held by the court that defend-
23 ants cannot terminate said contract provision, without at the same time giving up the right to operate its cars within the unicipal limit of College Park and giving up any right they may ave under the other provisions of said so called franchise contract, efendants say that they hereby surrender all rights they may have nder and by virtue of said so called contract franchise and ask the ourt to declare all their rights under and by virtue of said contract ull and void and to relieve the defendants of operating said line ithin the limits of College Park and to permit defendants to take p their said tracks within the corporate limits of College Park. Defendants say that constitutionally they cannot be required to perate their said property under and by virtue of any so called ontract provision within the limits of College Park at a loss and is impossible to continue to operate it at 5 cents save at a continuing ss and defendants say that under the constitution of the State of a., as contained in section 6359 and the constitution of the United tates as contained in section 6700 of the Ga. Code defendants would e deprived of their property without due process of law, if they ould be required to operate their cars within the corporate limits College Park under the so called franchise contract. If the court ould hold that said so called contract provision limiting the fare 5 cents must be performed and is binding unless defendants rogate the entire so called franchise contract and terminate the tire contract defendants hereby offer to surrender the entire con-act and cease to operate cars in or within petitioner's territorial mits.

55. Defendants say that on account of the facts heretofore set out e so called contract provision is now unconstitutional and in-quitable and that the same should not be enforced by a court of equity. Defendants say that said so called contract provision,
24 because of the facts heretofore set out, should be declared terminated and no longer enforcible and that this court ould itself declare said so called contract provision at an end.

Wherefore, defendants pray:

(*a*) That said so called contract provision be declared as not forcible as a valid and binding contract between the parties.

(*b*) That said so called contract provision be declared illeg void and unconstitutional.

(*c*) Said so called contract provision be now declared termina and of no force and effect.

(*d*) That plaintiffs and all other parties be restrained and joined from in any way or manner enforcing or undertaking to force said so called contract provision against defendants.

(*e*) That plaintiffs and all other parties be restrained and joined from interfering with defendants fixing and establishi reasonable, just and non-discriminatory fares or rates of fare w reference to College Park traffic and that petitioner and all oth parties be restrained and enjoined from in any manner or in a way interfering with defendants enforcing and collecting su reasonable, just and non-discriminatory fares as are fixed by fendants.

(*f*) Defendants pray for such other, further and additional rel as to the court may seem just and proper.

ROSSER, SLATON, PHILLIPS &
HOPKINS,
J. P. WEBSTER,
COLQUITT AND CONYERS,
Attys. for Defts.

GEORGIA,
Fulton County:

Personally appeared before the undersigned P. S. Ar
225 wright, who on oath says that he is president of the Geor Railway & Power Company and that the facts stated in t foregoing answer and cross bill are true.

P. S. ARKWRIGHT.

Sworn to and subscribed before me, this the 29th day of Oct., 192
[SEAL.] L. D. HINTON,
N. P. Fulton County, Ga. State at Large.

GEORGIA,
Fulton County:

Personally appeared before the undersigned W. H. Wright, wh on oath says that he is secretary of the Ga. Ry. & Power Co., an that the facts stated in the foregoing answer and cross bill are tru

W. H. WRIGHT.

Sworn to and subscribed before me, this Oct. 29th, 1920.
L. D. HINTON,
N. P. Fulton County, Ga., State at Large.

Exhibit "A."

Effective October 1st, 1920, applicant is hereby authorized to charge and collect as its maximum passenger fare, the sum of seven (7) cents per passenger, where a six (6) cents fare is now charged for one continuous ride over and on its city and suburban lines of railway, or any zone thereof as now established, except such fares on the Main Decatur and College Park routes as are fixed by contracts between the company and the cities of Decatur and College Park held by the Supreme Court of Ga. to be valid contracts.

That as early as practicable, and if the necessary equipment can be secured within 6 months from October 1st, 1920, applicant
226 shall place in service on its city and suburban street car routes, during the morning and afternoon rush hour periods as now established, additional seating capacity equal to twenty per cent of the seating capacity now provided, except as to the Main Decatur and the College Park routes, on which two named routes, trailers shall be operated on each schedule now operated during the above mentioned rush hours.

Applicant is directed to report to the commission in writing not later than November 15th next, what steps it has taken to carry into effect the provisions of this requirement.

The five cent fares now in effect on the Main Decatur and College Park lines, contracted for under vastly different conditions than now exist, are not fairly compensatory, and as to the patrons of the company on other routes, and on intermediate territory of these routes, are discriminatory. This commission is without authority to increase them.

Exhibit "B."

College Park, Ga.

Council Chamber, Feb. 5th, 1917.

Be it resolved by the Mayor and Council of the City of College Park as follows:

1. That this body is of the opinion that the present passenger service, during rush hours (afternoon particularly), of the Georgia Railway & Power Company, is entirely inadequate.

2. That this body respectfully requests the railroad commission of the State of Georgia to investigate the traffic conditions, and remedy the same in such way and manner as to them may seem just and right, both to the company and to the public.

227 3. That it is the opinion of this body that relief cannot possibly be given without the use of what is known as "trailers"; such trailers to be attached to regular cars and operated by the same crew as operate regular cars.

4. That looking to the aforesaid solution of the matter, this body hereby represents to the said commission that it has heretofore tentatively made an arrangement whereby such "trains" can be conveniently reversed at the terminus in College Park; and the use of the loop in the city of Atlanta, through Alabama Street (which this body is informed was permitted in order to — the running of such trailers) will enable the company to install and conveniently operate such service at a very slight increase of expense.

5. That these resolutions be spread upon the minutes of this body; and a copy of the same be transmitted to the said commission for their consideration.

COLLEGE PARK,
Fulton County, Ga:

I, as acting clerk of council of the mayor and council of the city of College Park, hereby certify that the above and foregoing is a true and correct copy of resolutions passed by said mayor and council at its regular meeting on the 5th day of February, 1917.

(Signed) R. L. PROCTOR,
Acting Clerk.

Filed in office this the 30th day of Oct., 1920.
T. C. MILLER,
Deputy Clerk.

(*Amended Petition.*)

GEORGIA,
Fulton County:

And now comes the plaintiff in the above stated case, and by leave of the court amends his petition in the above stated case and alleges as follows:

228 47. That Exhibit "F" hereto attached as a part hereof is a valid rule of the railroad commission of Georgia.

48. That Exhibit "G" hereto attached as a part hereof is a valid rule of the railroad commission of Ga.

49. That exhibit "H" hereto attached as a part hereof is a valid rule of the railroad commission of Ga.

50. That Exhibit "I" hereto attached as a part hereof is a valid rule of the railroad commission of Ga.

51. That the said defendants and each of them are subject to the above stated rules of the railroad commission, and were likewise subject to said rules and each of them on the 5th day of Oct., 1920, and on the date of the filing of this bill, and on the 30th day of Oct., 1920.

52. That conduct on the part of the said Power Company and said Electric Company, in line with their threat set forth in said written notice, exhibit "E", will be an absolute violation of the above named rules of the railroad commission and each of them.

Wherefore, petitioner prays as follows:

9. That the said Electric Company and the said Power Company, be restrained and enjoined from violating any of the rules, orders or regulations attached to this amendment and attached to the original bill.

10. That the said Electric Company and the said Power Company be required to perform and carry out each of the rules, orders or regulations of the Railroad Commission attached to this amendment and attached to the original bill.

ALFRED C. BROOM,
Pl'ff's Atty.

GEORGIA,
Fulton County:

In person before the undersigned authority came S. A. Johnson, Mayor of the city of College Park, with full authority to make this affidavit, and knowing the facts, who being sworn, deposes 229 and says that the facts set forth in the above and foregoing amendment are true.

This the 2nd day of Nov. 1920.

S. A. JOHNSON.

Sworn to and subscribed before me, this 2nd day of Nov., 1920.
H. L. CULBERSON,
N. P. Fulton County, Ga.

Read and considered. Let the above and foregoing amendment be filed, and the same is hereby allowed, subject to objection. This 4th day of Nov., 1920.

J. T. PENDLETON,
Judge S. C. A. C.

EXHIBIT "F."

Rule 1.

The word "Company" as used and intended by any and all of the rules and regulations of the commission, shall be deemed and taken to mean and include all corporations, companies, firms and persons that may be engaged, or that may hereafter become engaged, in performing for hire any service to the public that is now, or that shall hereafter be, subject by law to the jurisdiction or control of the commission.

EXHIBIT "G."

Rule 3.

All of the rates prescribed by the commission are maximum rat which shall not be exceeded by any company.

Any company may charge less than the prescribed maximu rate, provided that, if a less rate be charged to one person, such co pany shall, for a like service, charge the same lessened rate to persons, except as may be hereafter provided, and if a
230 company shall reduce any of its rates to or from one agen or station, it shall, except in cases where otherwise specia provided by the commission, make a reduction of the same p centage to and from all other stations on its line, to the end th no unjust discrimination be made in favor of, nor against, a person, persons or locality.

EXHIBIT "H."

Rule 4.

Each company shall keep conspicuously posted at all of its s tions, offices and agencies in Georgia, a copy of the schedules rates prescribed by the commission for the government of such co pany.

When any change is made in such schedule, either by such co pany voluntarily, or pursuant to an order of the commission, su company shall immediately furnish a copy of said change to t office of the commission, and shall also post copies thereof in t same manner as above specified, as notice to the public that s change has been made.

No advance in any rate, whether it be a maximum rate, or oth wise shall be made without the consent of this commission f being obtained nor shall such advance become effective until t days thereafter, and no reduction in any rate shall become effect until three days after notice had been given, as above required.

EXHIBIT "I."

Rule 7.

All rates effective in this State, except in cases otherwise specifi shall apply in either direction, over the same line, between the sa points.

Filed in office this the 4th day of November, 1920.

W. L. VENABLE,
D. Cl

231 Before the Railroad Commission of Georgia.

File No. 13946.

In re Application of GEORGIA RAILWAY AND POWER COMPANY for Increased Fares on Its Street Railway Lines, for Increased Rates for Electric Current for Light, Power, and Other Purposes.

Decided August 14th, 1918.

Order and Opinion of the Railroad Commission.

231½ Chas. Murphy Candler, Chairman;
George Hillyer, Chairman, Vice-Chairman;
Paul B. Trammell,
James A. Perry,
John T. Boifeuillet,
Commissioners.
J. Prince Webster, Rate Expert.
Albert Collier, Secretary.
James K. Hines, Special Attorney.

232 Railroad Commission of Georgia.

Atlanta.

August 14, 1918.

File No. 13946.

In re Application of THE GEORGIA RAILWAY AND POWER COMPANY for Increase in Charges to the Public for the Various Classes of Services Furnished.

Upon consideration of the record in the above entitled case of the facts and arguments submitted at the hearing had thereon, and of the report and opinion this date adopted by the Commission containing its findings of facts and conclusions therein with respect to the issues involved, which said report is hereby referred to and made a part hereof, it is

Ordered: That on and after September 1, 1918, and until the further order of this Commission, the following schedules of rates shall be the maximum schedules of rates to be charged by the Georgia Railway & Power Company, for the classes of services indicated:

SCHEDULE A.

Atlanta, Ga.

Residence Lighting Scale.

(Within City Limits. Monthly Basis.)

For the first 100 K. W. H. per month.....	8.88c per K. W. H.
For the next 100 K. W. H. per month.....	7.77c per K. W. H.
For the next 100 K. W. H. per month.....	6.66c per K. W. H.
For the next 200 K. W. H. per month.....	5.55c per K. W. H.
For all over 500 K. W. H. per month.....	4.44c per K. W. H.

Minimum monthly charge, $1.11.

Subject to a ten (10%) per cent discount, if bills are paid on or before the 10th of the month.

Contract Period, 1 year.

SCHEDULE B.

Atlanta, Ga.

Commercial Lighting Scale.

(Within City Limits. Monthly Basis.)

For the first 100 K. W. H. per month.....	8.88c per K. W. H.
For the next 100 K. W. H. per month.....	7.77c per K. W. H.
For the next 100 K. W. H. per month.....	6.66c per K. W. H.
For the next 200 K. W. H. per month.....	5.55c per K. W. H.
For the next 500 K. W. H. per month.....	4.44c per K. W. H.
For all over 1,000 K. W. H. per month.....	3.33c per K. W. H.

Minimum monthly charge, $1.11.

Subject to a ten (10%) per cent discount, if bills are paid on or before the 10th of the month.

Contract Period, 1 year.

233 SCHEDULE C.

Suburban Districts Not Incorporated, Adjacent to the City of Atlanta, Ga.

Residence and Commercial Lighting Scales.

Monthly Basis.

Within ½ mile of Atlanta City Limits.

For the first 100 K. W. H. per month.....	10c per K. W. H.
For the next 100 K. W. H. per month.....	9c per K. W. H.
For the next 100 K. W. H. per month.....	8c per K. W. H.
For the next 200 K. W. H. per month.....	7c per K. W. H.
For all over 500 K. W. H. per month.....	6c per K. W. H.

Minimum monthly charge, $1.66.
Subject to a ten (10%) per cent discount, if bills are paid on or before the 10th of the month.
Contract Period, 1 year.

Beyond the ½ mile radius of Atlanta City Limits.

1c per K. W. H. higher than the Half Mile scale for the same class of service.
Minimum charge, $2.22.
Subject to a ten (10%) per cent, discount, if bills are paid on or before the 10th of the month.
Contract Period, 1 year.

SCHEDULE D.

Decatur, Kirkwood, East Lake, Hapeville, Gainesville, Carrollton, Ga.

Residence and Commercial Lighting Scale.

Monthly Basis.

For the first 100 K. W. H. per month.....	10c per K. W. H.
For the next 100 K. W. H. per month.....	9c per K. W. H.
For the next 100 K. W. H. per month.....	8c per K. W. H.
For the next 200 K. W. H. per month.....	7c per K. W. H.
For all over 500 K. W. H. per month.....	6c per K. W. H.

Minimum monthly charge, $1.33.
Subject to a ten (10%) per cent discount, if bills are paid on or before the 10th of the month.
Contract Period, 1 year.

SCHEDULE E.

Hartwell, Royston, Lavonia, Canton, Bowersville, Duluth, Ingleside Clarkston, and Stone Mountain, Ga.

Residence and Commercial Lighting Scale.

Monthly Basis.

For the first 100 K. W. H. per month	.....	11c per K. W. H.
For the next 100 K. W. H. per month	...	10c per K. W. H.
For the next 100 K. W. H. per month	.....	9c per K. W. H.
For the next 200 K. W. H. per month	.....	8c per K. W. H.
For all over 500 K. W. H. per month	.....	7c per K. W. H.

Minimum monthly charge, $1.66.

Discount: Subject to a 10% *per cent* discount, if bills are paid on or before the 10th of the month.

Contract Period, 1 year.

SCHEDULE F.

Whitesburg, Ga.

Residence and Commercial Lighting Scale.

Monthly Basis.

For the first 100 K. W. H. per month	.....	12c per K. W. H.
For the next 100 K. W. H. per month	.....	11c per K. W. H.
For the next 100 K. W. H. per month	.....	10c per K. W. H.
For the next 200 K. W. H. per month	.....	9c per K. W. H.
For all over 500 K. W. H. per month	.....	8c per K. W. H.

Minimum monthly charge, $1.66.

Discount: Subject to a 10% *per cent* discount, if bills are paid on or before the 10th of the month.

Contract Period, 1 year.

SCHEDULE G.

Atlanta, Ga.

Retail Power Scale.

(Within City Limits. Monthly Basis.)

For the first	100 K. W. H. per month.....	5.55c per K. W. H.
For the next	400 K. W. H. per month.....	4.44c per K. W. H.
For the next	500 K. W. H. per month.....	3.88c per K. W. H.
For the next	1,000 K. W. H. per month.....	3.33c per K. W. H.
For the next	3,000 K. W. H. per month.....	2.77c per K. W. H.
For all over	5,000 K. W. H. per month.....	2.22c per K. W. H.

Discount: Above rates subject to a 10% discount, if bills are paid on or before the 10th of the month.

Minimum Charge: 75c per H. P. connected, but not less than $2.00 net per month.

Contract Period, 1 year.

SCHEDULE H.

Suburban Districts, not Incorporated, Adjacent to the City Limits of Atlanta, Ga.

Retail Power Scale.

Monthly Basis.

Within ½ Mile of Atlanta City Limits.

1c per K. W. H. higher than Atlanta Retail Power scale.

Beyond ½-mile Radius of Atlanta City Limits.

2c per K. W. H. higher than Atlanta Retail Power scale.

Minimum charge, $1.00 per H. P. connected, but not less than $3.00 per month outside of city limits.

235

SCHEDULE I

Retail Power Scale.

Monthly Basis.

Decatur, Kirkwood, East Lake, Hapeville, Gainesville, Carrollton, Hartwell, Canton, Royston, Lavonia, Bowersville, Duluth, Clarkston, Stone Mountain, Ingleside and Whitesburg, Ga.

1c per K. W. H. higher than Atlanta City retail power rates; with minimum charge of $1.00 per H. P. connected, but not less than $3.00 per month.
Contract Period, 1 year.

SCHEDULE J.

Heating and Cooking Scales.

Monthly Basis.

Atlanta, Ga.

Within City Limits: 4.44c per K. W. H.
Minimum charge, $1.66 per month.
Outside City Limits: 5.55c per K. W. H.
Minimum charge, $2.22 per month.
Discount: Subject to a 10% *per cent* discount, if bills are paid on or before the 10th of the month.
Contract Period, 1 year.

SCHEDULE K.

Primary Hydro-Electric Rates.

Industrial: Applicability: All Territory Served by the Company.

Basis for Determining Maximum Monthly K. W. Demand.

(The actual maximum demand for any month, during the continuance of the contract shall be taken as the average rate of using electrical energy by the consumer, during any thirty (30) minute period in such month in which electrical energy is used by the customer at the highest average rate of demand. Peak demands, due to short circuits or accidents to machinery, or momentary starting of motors, shall not be counted.)

Rates.

Service Charge: $1.11 per K. W of Maximum Demand per month, plus an energy charge as follows:

For the first 10,000 K. W. H. per month..... 1.33c per K. W. H.
For the next 10,000 K. W. H. per month..... 1.11c per K. W. H.
For the next 10,000 K. W. H. per month..... 0.88c per K. W. H.
For the next 20,000 K. W. H. per month 0.66c per K. W. H.
236 For the next 50,000 K. W. H. per month 0.55c per K. W. H.
For all over 100,000 K. W. H. per month 0.44c per K. W. H.

Discount: Above rates subject to 10% discount if bills are paid on or before 10th of the month.

Minimum Monthly Charge: K. W. of Maximum Demand Charge.

Contract Period, 1 year.

SCHEDULE L.

Primary Hydro-Electric Rates.

Central Station or Municipal.

Monthly Basis.

Applicability: All Territory Served by the Company.

Basis for determining Maximum Monthly K. W. Demand—Same as Industrial Rates—Schedule K.

Rates.

Service Charge: $1.66 per K. W. of Maximum Demand per month, plus an energy charge as follows:

(Same as energy charge for Schedule K. Subject to same discounts.)

Minimum Charge: K. W. of Maximum Demand Charge.

Contract Period, 1 year.

SCHEDULE M.

Secondary or Dump Power Rate Scales.

Applicability: All Territory Served by the Company.

By secondary or dump power is meant power which the company may be able to deliver in excess of the power required, reserved, sold or supplied as primary power, and the company reserves to itself the right to shut off or discontinue, or to resume the delivery of said secondary power at its option.

(This scale does not apply to reciprocal contracts entered into with other power companies.)

Rate: .00833 cents per K. W. H.
Yearly Guarantee, $13.33 per H. P. connected.
Discount: Above rates subject to 10% discount if bills are paid on or before 10th of the month.

SCHEDULE N.

Seasonal or Rural Rate Scales.

Applicability: All Territory Served by the Company.

(This service is applicable for gins and other industrial developments operating only a part of the year.)

237 Rates.

Service charge for those months when connected $1.11 per K. W. of Maximum Demand, plus energy charge as follows:

For the first 10,000 K. W. H. per month.....	1.33c per K. W. H.
For the next 10,000 K. W. H. per month.....	1.11c per K. W. H.
For the next 10,000 K. W. H. per month.....	0.88c per K. W. H.
For the next 20,000 K. W. H. per month.....	0.66c per K. W. H.
For the next 50,000 K. W. H. per month.....	0.55c per K. W. H.
For all over 100,000 K. W. H. per month.....	0.44c per K. W. H.

Discount: Above rates subject to 10% discount if bills are paid on or before 10th of the month.
Minimum Monthly Charge: K. W. of Maximum Demand Charge.
Contract Period, 1 year.

SCHEDULE O.

Gas Rates.

Monthly Basis.

Applicability: Decatur and Surrounding Territory.

For the first 10,000 cu. ft.....	$1.25 per 1,000 cu. ft.
For the next 20,000 cu. ft.....	1.15 per 1,000 cu. ft.
For the next 20,000 cu. ft.....	1.05 per 1,000 cu. ft.
For all over 50,000 cu. ft.....	.95 per 1,000 cu. ft.

Discount: Subject to 10c. per 1,000 cu. ft. discount if bills are paid on or before 10th of the month.
Minimum Monthly Charge: $1.00 per customer meter.

Ordered further: That the Georgia Railway and Power Company file with this Commission, monthly statements showing the result of its operations—that is, receipts, disbursements, etc., in detail, showing also comparison with operations for the same month in the preceding year.

It is hereby expressly declared that the above increases are authorized upon the express condition that the same are necessary because of emergencies arising out of national conditions existing at this time, and upon the further condition that when this emergency shall have passed, the old rates shall be restored upon the orders of the Commission.

Ordered further: That the Georgia Railway & Power Company be, and the same is hereby directed, to amend its customer contracts so as to provide in a heavy black border a notice to its customers substantially in accord with the following, said notice to be shown immediately preceding the contract provisions:

238 *Special Notice.*

The rates stated in the following proposal or contract are subject to change by the Railroad Commission of Georgia, in the manner prescribed by law, at any time. In the event of such change the new rates prescribed by the Railroad Commission will apply from the date made effective, for the unexpired term of this contract.

Ordered further: That the Georgia Railway & Power Company be and the same is hereby directed to print on the back of bills rendered to its various customers the rate schedules, upon which the amount of the bill shown on the opposite side has been calculated.

Ordered further: That the Georgia Railway & Power Company be and the said company is hereby directed to print all of its rate schedules, rules and regulations under which service is to be furnished, and that a copy of such publication be posted in the office of the company at each point where it conducts a general business; and also one copy filed with the Mayor or Clerk of Council of the various cities in which the company operates, so that the public may have free and easy access to the rate schedules, rules and regulations of the company as offered to the public in the conduct of its business with the public.

Ordered further: That the scale of rates heretofore obtaining in connection with ceiling fans be and the same is hereby cancelled; in future such service to be furnished on the regular lighting and power scales according to character of service wires to customer's premises.

Ordered further: That the Georgia Railway & Power Company be and the same is hereby authorized and required to discontinue the furnishing of free service, such as supplying lamps, or renewals thereof, etc.

Ordered further: That the Georgia Railroad & Power Company be and the said company is hereby directed to cancel all preferential contracts, and all customers using the same class of service shall be placed on the same schedule as above contemplated.

By order of the Commission:

C. M. CANDLER,
Chairman.

ALBERT COLLIER,
Secretary.

11—464

239 Railroad Commission of Georgia.

Atlanta.

Atlanta, August 14, 1918.

File No. 13,946.

In re Application of GEORGIA RAILWAY AND POWER COMPANY for Increased Fares on Its Street Railway Lines, for Increased Rates for Electric Current for Light, Power and Other Purposes.

Before the Railroad Commission of Georgia.

By the COMMISSION:

Applicant is a corporation under the laws of Georgia engaged in operating street railway service in Atlanta, Kirkwood, Decatur, East Point, College Park, Hapeville and Gainesville, Georgia. It is also engaged in serving the public in these cities and contiguous territory with electric current for heat, light and power uses.

Its services of this character also cover practically all of North Georgia, including forty-six towns, besides a large number of mills, manufacturing plants and industries.

Embraced in these services is the furnishing of current to various municipalities for the pumping of water and other public uses, and for light and power to numerous public institutions, hospitals, army posts and camps. A number of the industries served are largely engaged in the manufacture and supply of Government war materials.

Applicant operates five hydro-electric plants, four steam plants and also purchases current from five or six other plants. It generated and purchased, in 1917, 258,607,882 K. W. H., of which 222,517,694 K. W. H. were accounted for in revenue deliveries.

It operates in Atlanta and vicinity 224 9/10 miles of electric street railway and 7½ miles in Gainesville. Its Atlanta and suburban lines consist of 68½ miles of single track and 156 1/3 miles of double track.

Applicant has in service 352 miles of high tension transmission lines, 198 miles of which is on steel towers, and 324 miles of distributing lines, a total of 676 miles of transmission and distributing lines. It has developed water and steam powers, aggregating 160,800 H. P.

The important relation which the applicant sustains toward the industrial and commercial welfare of practically all of North Georgia is evident.

240 In addition to its developed water powers, it owns undeveloped water powers of more than 400,000 H. P., so that its potentialities in the future growth of North Georgia are great.

This Commission is convinced that this section of Georgia is vitally concerned in the ability of applicant to meets its responsibility as the Trustee of these great industrial resources, and to the

nd it should receive at the hands of the public and governmental gencies fair and unprejudiced treatment. And the fact that the ontrol of the Company is in other sections of the country should ot prejudice it.

The water powers developed by these interests and now dedicated useful public service, for centuries past remained undeveloped nd wasted by Georgia owners and interests. This State has need f outside capital in the development of its great resources. It has rdially invited it into its service. Surely then, no different treatent should be accorded it, coming on our invitation, than is given ome capital. And besides, such governmental agencies as this ommission, and the public, should bear in mind that hydro-electric evelopments are comparatively new ventures for capital in this ountry, and attended with more risks than attach to such long stablished ventures as steam powers.

Water sheds may be denuded of forests; droughts may and do ome; electricity itself is as yet a mystery to the greatest of xperts, and instrumentalities in its generation, distribution and ractical application are not fully perfected, and may within a rief period become obsolete and out of date.

Such considerations indicate that during the development and onstructing periods of such enterprises, where risks of loss of capal are great, some measure of considerate, if not liberal, treatment hould be extended toward venturesome capital.

This Commission at least is so impressed and shall undertake, herefore, to deal with this application in such a spirit.

And, especially so, under the abnormal conditions now prevailing n this country and throughout the world.

In a recent similar inquiry, the Indiana Pub*l*c Service Commision aptly said:

"With the outbreak of the European war and, later, with our ntrance therein, there have come conditions wholly beyond the revious imagination of any man. As if overnight, we suddenly ave been catapulted from an era of economic tranquil-ity into a aelstrom of economic revolution—the path of which has enveloped he entire industrial and commercial activities of the nation. There s no longer such a condition as normality of business, and almost very industry or commercial institution finds itself facing critical roblems for which there are no landmarks or guide posts."

41 Applicant alleges that because of these abnormal conditions created by the war; because of the large increase in the st of labor and of every material and supply used by it in supplyg service to the public, and in taxes which it is required to pay to arious jurisdictions, its operating expenses have been and are being increased, that it is no longer, under existing rates, able to meet s fixed charges and taxes, provide for the reasonable conservation its properties and secure such a return upon the value of its propty devoted to the pubilc use, as will maintain its credit and secure dditional capital with which to promptly and efficiently meet the

public demand for its essential services, and that out of these conditions there has arisen an emergency in its business, for which, in the interest of the public as well as of itself, relief is asked in the way of increases in fares and rates. It is alleged that fares and rates established under normal, pre-war conditions, as reasonable and just, are now unreasonably low and do not afford fair return, and that their insufficiency is so marked as to invite disaster or a break down in its public service, unless prompt relief is given for the period of these abnormal conditions.

Applicant submitted voluminous evidence in support of its allegations.

The City of Atlanta, other interested communities, and numerous individual patrons of the petitioner, protested against the grant of the applica-ion, but submitted practically no evidence, contenting themselves with the submission of studies and analyses of the evidence submitted by applicant, and arguments contending that the petitioner had not sustained its application.

The evidence submitted makes obvious the fact that the business of applicant has been directly and seriously affected by prevailing abnormal conditions.

The war has created such enormous demands by our Government and its European Allies for man power, materials, industrial essentials, food and capital, that the supply in this country is not equal to our largest needs, and prices and costs have soared.

The Commission knows this—every one knows it—every time one makes a purchase of an article of necessity or luxury, the fact is emphasized. Among the principal elements entering into the cost of petitioner's services are labor, steel and iron essentials, metal-ic supplies and fuel.

Without halting as to prices, it is difficult, and at times impossible, to obtain these essentials in quantities or as needed.

Increases in the cost of essentials in applicant's business run from fifty to four hundred per cent.

The evidence in this case (the common knowledge of all of us corroborating) shows large increases in the wages paid both common and skilled labor, a large item in the cost of rendering applicant's public services. Increased cost arises out of the inefficiency and uncertain character of much of the labor now obtainable.

Moreover, it is common knowledge that the existing wage
242 scales of petitioner, and other like corporations in the South, must and will be considerably increased, possibly with a retroactive effect, because a living wage only will meet living costs.

On page 21 of one of the Protestants' briefs Counsel says:

"We are going to assume that the Commission will not grant an emergency increase in rates which were voluntarily made by the Company, and which have been in force for a number of years without protest at least on the Company's part, unless it is shown that the net income produced from these rates is materially less now than it has been throughout the course of these years."

This assumption would have been quite reasonable, but for the omission of some suggestion or condition as that "the necessary investment or amount of property being used in the public service remaining the same, and the net income of previous years producing sufficient funds to provide for current depreciation and soome appreciable adequacy of return upon fair property values."

If, for example, the plant being used in the public service in 1918 has been increased fifty per cent. since 1912, would not a larger sum as "net income" be justified?

It is, of course, entirely possible for "net income" to even increase over previous years, and still be insufficient to properly care for the property and maintain the company's credit by such fair returns upon its legitimate and actual capital outlay as it is entitled to in law and good conscience.

Another consideration, in this connection, appears to us should have weight.

Today's business, industrial and financial conditions are abnormal. It is difficult to obtain large new capital for even the most promising ventures. The Federal Government, desirous of conserving capital for governmental needs, is discouraging and in some instances forbidding bond flotations for capital uses.

This Company is bound in law to supply as far as it can the public demand for the services it has undertaken to render. This Commission is vested with power to compel the rendition of adequate service and to order reasonable extensions and enlargements of its facilities and plants. The Commission has knowledge, through complaints filed with it and the undisputed evidence in this case, of the inadequacy of the Company's existing plants and facilities to meet the present demands for its services. The business interests of this section will suffer if they are not adequately served. The Company has been unable to secure new and needed capital, under war conditions, for the enlargement of its existing plants or the construction of new plants upon its undeveloped water power sites.

243 The insufficient supply of steam coal restricts steam power developments, and enforced methods of conserving coal evidence the wisdom and necessity of a larger use of our valuable and readily available water powers. It is readily seen, therefore, that such rates as will provide only a fair return upon the fair value of the property of this Company now in public srvice and which are fair to the public and not in excess of the value of the services rendered, because of the abnormal conditions prevalent, are really a necessity and this irrespective of the "net income" of past years, in order that the demands of the public may be met by increased facilities constructed out of such earnings, which under normal conditions would be distributed as dividends.

Protestants have insisted that the existing rates of Petitioner with economical management have been and are bringing in revenue sufficient to meet operating expenses and taxes and provide a fair return upon the fair value of the property used by the public.

Counsel contend further that the claims of the Company for depreciation are excessive, and that the record does not contain such information as to the character, age, uses, etc., of its properties as will enable the Commission to ascertain what is a reasonable allowance for depreciation.

It is further argued that in view of the fact that the Company has not in the past set up a depreciation reserve and has gotten along without such, it cannot now claim that the necessity for a depreciation reserve is an emergent cause for an increase in rates.

This Commission is fairly well acquainted with the properties of petitioner. Since the Company's first organization down to date it has had occasion to frequently make exhaustive inquiries into every phase of its business and its operations, the character and extent of its properties, their development and uses, its capitalization and actual values, and the financial results of its operations. Notwithstanding this, under normal conditions, an inventory and appraisal of the Company's properties and an expert audit and analysis of its revenues and expenses would be desirable, if not a duty.

Such a course at this time, in view of the Commission's comparative familiarity with the petitioner's business and properties, and because of the time necessary and the large expense which would be incurred, does not seem justified.

The Commission is abundantly satisfied that it can, without difficulty, arrive at a very conservative estimate of the minimum value of the property of this company in the public use. The Company may complain at our use of a minimum value, rather than the fair value, but certainly the public cannot. Such value may be estimated by some of the methods approved by the Supreme Court of the United States, and we, of course, are not confined in such an inquiry to the one method of estimated reproduction new and depreciated.

This Commission, nor any other that we know of, takes outstanding capitalization as the fixed measure of values. The open
244 market value of such capitalization, however, may be considered in an inquiry into values and should be weighed.

No Commission, certainly not this, prescribes rates, however, based solely upon capitalization. It is the fair value of the property in use that measures the rate, coupled with the value of the service to the public. Cost of the property is not and should not be used as the sole or exclusive method of arriving at values. It does, however, throw light on such an inquiry and should be weighed.

With a fairly approximate estimate of the minimum value of the property, it is not impossible to arrive at a fair and conservative estimate of what amount should be allowed annually on the property as a whole, for depreciation and obsolescence, without detailed estimates as to each unit, the time in use, probable life, etc. There are several other accredited methods of estimating annual depreciation, based upon observation and experience throughout the country with similar properties. The maintenance of the property of the petitioner has been high, and in the allowance for annual depreciation hereinafter made, this fact has been considered.

As to the advisability, if not the necessity, in the interest of good, continuing service to the public, as well as of justice to the owners of the property of a fair depreciation allowance, this Commission entertains no doubt. Only recently it declined to approve a distribution of surplus earnings by this same petitioner, until provision had been made for depreciation, and reaffirmed the principle that rates should provide therefor.

Protestants have insisted that applicant's claims that an emergency confronts it which requires prompt relief by increased rates, have not been sustained, and that in fact there is not an emergency.

An "emergency" is defined as an unfor-seen occurrence, or a combination of circumstances which call for immediate action or remedy.

If because of war, the operating expenses of a public utility are increased to such an extent (with reasonable certainty that still further increases are inevitable) as that after paying the same, the remaining revenues are insufficient to provide for the reasonable preservation of the property in use, the payment of governmental charges such as taxes, public improvement assessments, interest on lawfully issued bonds, contractural obligations such as reasonable rentals for property used and necessary in its business but not owned, and such a reasonable return upon owned property in use as will sustain its credit, a combination of circumstances apparently exists which calls for immediate action or remedy. It follows that when such a combination of circumstances no longer exists, the necessity for emergency relief ends. Emergency rates therefore, should be temporary and only for the period of the abnormal conditions which necessitate them.

A claim for temporary emergency rates must not be used as a means of securing an unreasonable or an unjust return, nor
245 with the purpose thereby of the permanent establishment of higher rates. The conditions of war will not be selfishly capitalized by public utilities with the consent of this Commission, nor shall they be used as a cloak under which to secure returns larger than those to which they are justly entitled. This is a period of national sacrifice and public utilities, like individuals, should be willing to forego such returns as are not necessary to meet operating expenses under careful and economic management, provide for fixed charges, contractural obligations and governmental charges, keep their properties in efficient operating condition and adequacy, and maintain their credit to the end that essential capital for additional facilities to meet the public demands or needs may be secured upon reasonable terms.

And the public should bear in mind that what might be a reasonable return upon a government bond or bank stock or the stock of an established industry producing some staple necessity, cannot be used as a measure of return which a public utility such as a combined street railway and electric generating and transmitting corporation should be permitted. The latter has contingencies, which must be measurably anticipated and properly out of earnings, or it will suffer disaster.

A street railway may in any year, be called upon to contribute

large sums under paving assessments, for example, as to which it is not consulted; over which it has no control, and the expenditure in which does not increase its business nor add a penny to its revenue.

The laying of a sewer or change in the grade of a street, as has been often seen in Atlanta, may necessitate the taking up of its rails and the entire reconstruction of its tracks, without adding another dollar to its revenues.

A sleet storm in winter or a hurricane in summer may break down scores of miles of wire and poles and necessitate the rebuilding of miles of expensive transmission and distribution lines, which cannot be charged to capital account. Such incidents may conceivably halt revenues for the time and add to normal expenses simultaneously. They are so recurrent as almost to have become certainties rather than contingencies, and hence has been widely recognized the justice of the claims of such utilities as this, that the normal rate of returns allowed them should be somewhat higher than that of more stabilized business.

This application and our action thereon concerns and affects a very large number of people, as well as the petitioner. Not all of the public are informed as to the established principles which must control in rate making for public utilities.

In the nature of things, it is without knowledge of the amount and character of the large and scattered properties devoted to its service and the large amounts of capital invested therein, by the applicant.

246 The foregoing general observations have been made with the hope that perhaps they may reach some of the public and convey some idea of the magnitude of the interests involved in this inquiry and of the necessity, which this Commission has striven to appreciate, of dealing with it from an impartial standpoint and with the fullest obtainable knowledge of the underlying facts.

Property Values.

In the following estimates, the Commission has separated the properties owned by the Georgia Railway and Power Company, and those leased by it from the Georgia Railway and Electric Company, and later consolidated them into one complete property as operated by the Georgia Railway and Power Company. We have not undertaken to arrive accurately at actual values, but have estimated minimum values.

We have used as bases of these estimates, as to the separate property of Georgia Railway and Power Co.—(1) original plans and estimates submitted, under oath, to the Commission in the original capital application of this Company when organized and (2) sworn detailed statements of actual costs of acquisition, development and constructions made from year to year, submitted in bond applications filed with the Commission.

Some items of these costs were deemed excessive and the full amounts reported have been reduced, in our estimates, by more than $1,000,000. We have excluded undeveloped properties, not in

mediately needed in its public service; (3) the open market quotations of the outstanding stock and bonds of the Company. Bonds of the Company are not allowed to be issued for the full cost of the construction, but only for 80 and 85 per cent of actual costs. This basis indicates the opinion of investors as to value. In this estimate we have excluded from capitalization outstanding Bills Payable even where claimed to represent capital expenditures, although the market quotations on outstanding capital stock anticipate the payment of Bills Payable, before there can be any application of Company assets to the liquidation of stock.

As to the separate property of the Georgia Railway and Electric Company, we have used,

(1) A detailed inventory and appraisal of its property as made March 18th, 1912, by W. A. Baehr, a consulting engineer of high reputation and character, made for the Georgia Railway and Power Company upon its lease of these properties. In passing upon one of the applications of the latter for approval of a bond issue, the attention of the Commission was called to an item of over $31,000.00 for the making of this inventory and appraisal, which it was asked should be capitalized.

This was denied. The Commission has called for this Inventory and has carefully studied the same. Made under the circum-
247 stances it was, by an Engineer of Mr. Baehr's standing, we attach value to it, and excluding "going concern" value included by Mr. Baehr, we have used it as a basis.

Unit prices now are much higher than in 1912 and a fair appraisal based on 1912 unit costs cannot be considered excessive in 1918.

To this we have added amounts for new construction, year by year, since 1912, as sworn to and submitted to the Commission in detailed statements in Bond applications:

(2) The open market quotations of the outstanding stock and bonds of the Company. Bonds are allowed for only 75 per cent of the cost of new construction. It should be remembered that values as indicated by the market quotations of capitalization include all the assets of the Company, among these the capital stock of the Atlanta Gas Light Co., and the Atlanta Northern Railway.

Estimates of the values thus made are as follows:

Georgia Railway and Power Co.

Property and Development Costs, Excluding Undeveloped Properties Known as Etowah, Newman, Inter-state, and South Carolina Water Power Sites.

From Detailed Sworn Statements as Submitted to the Railroad Commission, with Certain Overhead Expenses as Reported Excluded in Part as Excessive.

(Cents Omitted.)

1. Expenditures to October 31st, 1916, under contract of Northern Contracting Company with Georgia Power Company:	
(*a*) Acquisition and development at Tallulah Falls, Mathis and Tugalo	$5,042.0
(*b*) Transmission lines, rights of way, etc.	1,422.9
(*c*) Sub-stations, Transformer Stations, Equipment, etc.	676.5
(*d*) Telephone lines and equipment	99.2
(*e*) Distribution systems	11.2
(*f*) 20% allowed on above to cover over-head charges, including engineering, contractor's profits, law, organization and general expenses, and interest during construction	1,450.4
Total allowed expenditures to October 31st, 1916, under Northern Contracting Co. contract	$8,702.4
2. Other new constructions, made directly or purchased by Georgia Railway & Power Co., as per detailed statement *in* file, between March 17th, 1912 and October 31st, 1916, less items aggregating $97,326, questioned by the Commission..	$1,762.1
248	
3. Additional acquisitions and new constructions by Georgia Railway & Power Company, direct or purchased, between October 31st, 1916 and December 31st, 1917, as per detailed statements on file	1,024.1
4. Atlanta Water & Electric Co. property and development (known as Bull Sluice), purchased..	1,500.0
5 Blue Ridge Eletric Co. properties and development, including Dunlap Shoals	1,135.0
Total, excluding franchises, going value, and undeveloped properties not immediately needed for public service	$14,123.7

Georgia Railway & Electric Co.

Leased Properties.

1. Inventory and appraisal, March 18th, 1912, by W. A. Baehr, Engineer, made for the Georgia Railway & Power Company, for use in connection with lease of the properties from the Georgia Railway & Electric Co.:	
(a) Reproduction, new, of physical properties.....	$15,716,445
(b) Estimated condition, March 18th, 1912, 95.35% making depreciated value as of March, 1912..	$14,985,885
(c) To which add new acquisitions and constructions, chargeable to Capital Account, made between March 18th, 1912 and December 31st, 1917, as shown in sworn detailed statements filed with the Railroad Commission.....	3,617,010
Total Georgia Railway & Electric Company property, going value and franchises excluded....	$18,602,895
(d) In addition to the foregoing, there are included in the lease to the Georgia Railway & Power Company, the Atlanta Gas Light Company and the Atlanta Northern Railway. These are not included in this valuation.	

Georgia Railway & Power Company and Georgia Railway & Electric Company as Jointly Operated, Excluding Atlanta Gas Light Company, Atlanta Northern Railway Company, and Undeveloped Water Power Sites, Except Tugalo.

Consolidated Costs and Estimated Minimum Values.

June, 1918.

249 Georgia Railway & Power Company, owned..	$14,123,730
Georgia Railway & Electric Company, leased..	18,602,895
	$32,726,625
Assuming condition as of June, 1918, considering high maintenance expenditures and recent completion of Georgia Railway & Power Company development, to be 95%, deduct for Accrued Depreciation	1,636,331
Leaves as indicated present minimum value of physical properties, (Franchises and so called Going Value, excluded).....	$31,090,294
To which add necessary cash working capital, 10% of 1917 operating revenues	666,365
	$31,751,659

This Commission does not approve of the method of attempting to segregate and attach specific items of value, as "Going Value," but it believes that there is added value in physical properties which have been unified, adapted and adjusted to special uses and for specific purposes, and assuming that the foregoing costs and estimated values are the "naked" or "bare bones" minimum values of merely the physical properties under consideration, and that some consideration should be given to the fact that actual cash was paid for certain of the franchises of the Georgia Railway & Electric Company, the present value of the properties owned, leased and operated jointly or as one going concern, in our opinion, is not less than $35,000,0

Georgia Railway & Power Company.

Market Value of Capitalization as Bearing upon Present Fair Valu

June, 1918.

Stock.

Description.	Amount outstanding, par.	Market quotation.	Market value.
1st Preferred	$2,000,000	75	$1,500,0
2nd "	10,000,000	13	1,300,0
Common	15,000,000	9	1,350,0
Total.....	$27,000,000		$4,150,0

250 Bonds.

1st. and Refunding.....	12,971,500	78	$10,177,7
Blue Ridge Elec. Co.....	236,500	87	205,7
Atlanta Water & Elec. Co...	1,400,000	87	1,218,0
Savannah River Power Co...	200,000	87	174,0
Total.....	$14,808,000		$11,715,5

Georgia Railway & Power Company.

Stocks and Bonds.

	Outstanding.	Market value.
Total Stock	$27,000,000	$4,150,0
Total Bonds	14,808,000	11,715,5
Total Stock and Bonds	$41,808,000	$15,865,5

This capitalization does not include outstanding Bills Payable. It does include all of the property of the corporation, developed and undeveloped and leaseholds.

Georgia Railway and Electric Co.

Stock.

Description.	Amount outstanding, par.	Market quotation.	Market value.
Preferred	$2,400,000	79	$1,896,000
Common	8,514,600	113	9,621,498
Total	$10,914,600		$11,517,498

Bonds.

Ga. Rwy. & Elec., 1sts	$5,760,000	89	$5,126,400
" Refunding & Impr.	4,292,000	85	3,648,200
Atlanta Consols.	1,900,000	95	1,809,000
Atlanta St. Rwy.	225,000	90	202,500
Ga. Elec. Lgt. Co.	1,350,000	90	1,215,000
Total	$13,527,000		$12,001,100

Georgia Railway and Electric Co.

Stock and Bonds.

	Outstanding.	Market value.
Total Stock	$10,914,600	$11,517,498
251 Total Bonds	13,527,000	12,001,100
Total Stock and Bonds	$24,441,600	$23,518,598

This capitalization does not include Bills Payable. It does include stock ownership of allied companies, such as Atlanta Gas Light Company, as also franchises, leased to the Georgia Railway & Power Company.

Georgia Railway & Power Co. and Georgia Railway & Elec. Co.

Consolidated Market Values of Capitalization.

Georgia Railway & Power Company	$15,865,525
Georgia Railway & Electric Company	23,384,123
Total	$39,384,123

The foregoing does not include Bills Payable for Capital Account. It does include all properties developed and undeveloped, owned and leased, including franchises of the two concerns.

1917 Operations.

Having undertaken to arrive at the minimum value of the properties, as a whole, used and useful in the public service, the Commission undertook to ascertain the financial results of their operation for the year ending December 31st, 1917, under existing rates.

The following statement is fairly approximate:

Georgia Railway & Power Company.

Revenue and Expenditures, All Departments.

1917.

(Cents Omitted.)

Operating Revenues		$6,663,65
Operating Expenses		3,524,26
Net Operating Revenue		$3,139,40
Non-operating income, including—		
Dividends Atlanta Gas Lt. Co.	$165,170	
Miscellaneous	154,954	
		320,12
Total		$3,459,53
Less Taxes Paid		485,54
Total Net Income		$2,973,98
252 Less depreciation:		
In view of high maintenance heretofore claimed, supported by Engineer Baehr's condition report in appraisal of 1912, 2½ per cent on total value of physical properties, for Annual Depreciation and obsolescence, seems reasonable, viz:		
2½% on $31,090,254		777,25
Remainder of Net Income		$2,196,72

Available for Rentals, other fixed charges, contingencies and return on the fair value of the property and cash working capital devoted to the public use:

Equivalent to

6.91 per cent on estimated minimum value of naked physical properties and working capital..... $31,751,659

Or

6.15 per cent on estimated minimum value of unified and adapted properties, $35,000,000 and cash working capital, $666,000..... $35,666,000

Or

5.57 per cent on value as indicated by open market quotations of outstanding capitalization..... $39,384,123

N. B.—Included in the remainder of Net Income, Supra, $2,196,727, is $165,170 of Dividends from Atlanta Gas Light Company. Net Income should therefore be reduced by this sum or the value of the Property in use increased by the value of the Atlanta Gas Light Company property which in another proceeding we have estimated at the minimum of $3,500,000.00.

Deduction of the net income to the Georgia Railway & Power Company from the Gas Light Company property not included in valuation, $165,170 from the total net income of $2,196,727 of all owned and leased property after allowance for Depreciation, leaves $2,031,557

Equivalent to

6.39% on estimated minimum value of naked physical properties and working capital, of..... $31,751,569

Or

5.69% on estimated maximum value of unified and adapted properties and working capital..... $35,666,000

Assuming that the rental paid Georgia Railway & Electric Company is no more than a fair return on the value of the leased properties, and that being a contractural obligation which must be paid, and further assuming that the annual interest charges of the Georgia Railway & Power Company on Bonds lawfully issued must be paid, and that the sum of the two constitute no more than a fair return on the values of the combined properties, and are payable out of net income, the following result- of operations appear:

Disposition of Remainder of Net Income, Based upon Fixed Actual Charges of Georgia Railway & Power Co.

1917.

Remainder Net Income, all sources, after provision for estimated Annual Depreciation, Supra.....		$2,196,77
Less Fixed Charges, viz:		
(*a*) Contract rental for leased properties, Georgia Railway & Electric Company.....	$1,605,572	
(*b*) Interest on Bonds and Notes, Georgia Railway & Power Co..	745,823	
		2,351,39
Deficit		$154,66

Working Capital.

In the foregoing statements we have allowed as necessary working capital, $666,000.00, or approximately 10 per cent on gross operating revenue. This is in line with experience and observation. The accounts of the Company of supplies usually carried and cash actually used cearly show that this allowance is not too high.

Depreciation.

The allowance for Annual Depreciation, 2½ per cent on the estimated value of physical properties used, we are satisfied is not too high. We reached this conclusion after a study of approved tables as to the average life of the more important items constituting the properties, and from an examination of numerous estimates used by various other State Commissions on similar properties.

Georgia Railway & Electric Company Rental.

The rental paid Georgia Railway & Electric Company for the properties, rights, franchises, etc., leased from it amount to $1,605,572 in 1917.

The properties leased include all of the railway, electric light and power lines and systems and all of their equipment within a seven mile zone measured from the center of the City of Atlanta, and also the Capital Stock of the Atlanta Gas Light Company and the Atlanta Northern Railway, (the Marietta inter-urban line) and equipment, and the office building in Atlanta known as the Gas and Electric Building.

254 Taxes have been assumed and are paid by the Lessee, the Georgia Railway & Power Company.

In our treatment thus far, it is contemplated that Depreciation is also cared for by the Lessee, so that the contract rental of $1,605,572, just as paid and without any question of the items going to make up the same, is a clean net return to the owners of the Georgia Railway & Electric Company for the use of their property.

We have estimated the naked physical properties of the Georgia Railway & Electric Company as of a minimum value of $18,602,895 to which adding $3,500,000 for the Atlanta Gas Light Company, and $500,000 for the Atlanta Northern Railway Company, we have $22,602,895, as the minimum value of the physical properties leased to the Georgia Railway & Power Company. In addition, $465,678 of other assets were turned over with the leased physical properties, making, in all, $23,068,573. If there be recognized any additional value in the properties for unification and adaptation and for Franchises for which the public made or makes charges the value of these leased properties at this time can hardly be less than $25,000,000. A net rental therefore of $1,605,572, or 6.42%, in our opinion is not unreasonable, considering the character of the business and properties and the many contingencies which may materially affect earnings. Holding this view, we do not see how we can do else than allow the full amount of the contractural rental as a legitimate charge deductible from "Net Income," as in the immediate preceding statement of "Disposition of Net Income."

Interest on Bonded Indebtedness.

The deduction of $745,823, aggregate of interest charges of the Georgia Railway & Power Company, in our opinion is a proper deduction from Net Income. The Bonded Indebtedness of the Company has been lawfully issued: it was approved by this Commission: it represents 80 and 85 per cent of the cost of acquisition and development of the properties: it does not in our opinion exceed the minimum value of the property against which issued.

Assuming that the contractural rental obligations of $1,605,572 paid the Georgia Railway & Electric Company is not more than a fair return upon the value of its leased properties, and that it is all of a return which can be properly charged to the public, (in other words that the public should allow only this return from rates and that the Georgia Railway & Power Company is not entitled to a return as Lessee, in addition to the fair return to the Lessor), and

Assuming that the interest paid on Georgia Railway & Power Company bonds is a return on the value of its property measured by the par value of outstanding bonds, and

255 Assuming, still further, that provision for Annual Depreciation is essential and necessary for the conservation of the property and the continuance of efficient service to the public, the Company experienced a deficit in 1917.

The whole question as to the financial results of the applicant's operations for 1917, depends upon the allowance, if any which should be made for depreciation.

Depreciation can be, as a matter of fact, postponed. When this is done, the Company, at once, begins adding to its liabilities. Deferred maintenance and postponed depreciation are liabilities, insidious in character, because there does not happen to be a creditor who insists on payment as his debt is due, and the debt piles up with compound interest, until on the day of reckoning, disaster is realized.

We know of no manufacturing or industrial establishment whose machinery, and developments, structures and constructions of every character, except for some items like dams, forbays, buildings, etc., are so liable to depreciation or so quickly liable to become obsolescent or out of date as an electric plant. Doubtless its reservoirs are steadily filling at this time with sand and mud, and in time their capacity will be so reduced as to require dredging.

Plants of this character are like men, they grow old—they decay—they are relegated or scrapped, as out of date and no longer able to keep step with the lengthening stride of progressive art.

We therefore adhere to our own previous conviction and precedents, and provide an allowance for depreciation and obsolescence, and as we have opportunity, from time to time, shall see that such allowance is properly expended in keeping these properties in an up to date, efficient condition. We do not believe 2½% on the estimated minimum value of the property as a whole is too high.

We do not believe the applicant is facing bankruptcy.

We are impressed however, with the fact that serious problems of financing confront it, and that upon their prompt solution, depends in a large degree, its ability to render the vitally important service the public demand of it.

The industrial welfare of this community and of the section of North Georgia it serves, to say nothing of its relation to National demands and necessities, is in a large degree dependent upon the efficiency, adequacy and dependability of applicant's service.

Careful study of the results of the Company's operations for six months of 1918, which the Commission has required subsequent to the hearing, shows more favorable results than were anticipated in estimates by the Company during the hearing.

256 But in an inquiry of this character and by a body of this character, the Commission believes that it is not only proper but its duty, to take notice of well known and officially known facts and action thereunder by governmental bodies.

For example, the National War Labor Board has only very recently put into operation, with retroactive effect, increased wage scales in a number of street car systems, among the number the New Orleans Railway & Light Company. The scale made effective on that system carries a smaller percentage of increase than on several other systems upon which increased wage scales were ordered.

This Board now has before it controversies involving minimum living wage scales in Atlanta, as also Birmingham and Memphis.

The awards of the Board in these cases can be anticipated with almost absolute certainty.

If the New Orleans scale, which on account of local conditions was not increased so largely as have been others, is made effective in At-

lanta, it means an increase in the total annual wages to be paid by applicant to conductors and motormen, of $250,000 to $350,000 according to the proper construction to be put on certain applications provided for in the New Orleans award.

If any increase is given conductors and motormen, corresponding increases must be allowed all other employees, such as machinists, carpenters, linemen, foremen, inspectors, track help, etc., and such an increase means an additional $250,000.

This Commission cannot shut its eyes to such facts nor refuse them consideration.

Taking therefore, a comprehensive view of the entire situation as shown and officially known to the Commission, and of all conditions existing and confronting applicant, and of the actual result of its operations for the past eighteen months, and estimated results for the near future under a continuance, which seems certain, of existing abnormal operating conditions, and the growing demands of the public for services which seem essential to its welfare, we feel that temporary relief in the form of somewhat higher rates should be granted.

Power and Jurisdiction Over Street Railway Rates.

It is our conviction that such emergency relief as seems necessary, should be spread throughout all the rates covering the entire business of the Company.

The Commission finds itself, however, confronted with a grave and difficult question of jurisdiction and power as to affording any of such relief through increases in applicant's street railway rates.

257 Section 5 of the Act of the General Assembly approved August 23rd, 1907, increasing the membership and powers of the Commission, is in part as follows:

"The powers and duties heretofore conferred by law upon the Railroad Commission are hereby extended and enlarged so that its authority and control shall extend to Street Railroads, and Street Railroad Corporations, Companies or persons owning, leasing or operating street railroads in this State:

"Provided, however, that nothing herein shall be construed to impair any valid subsisting contract now in existence between any municipality and any such company: and provided that this Act shall not operate as a repeal of any existing municipal ordinance" * * *

The physical existence of a contract in 1907 between the town of Decatur and the lessor of applicant, prescribing a five cent maximum fare between Decatur and Atlanta is admitted. A similar contract between College Park and applicant's lessor, was in existence.

The Georgia Railway & Electric Company obtained its Atlanta franchises under an Ordinance of the City of Atlanta, approved February 8, 1902, known as the "Consolidating Ordinance." This ordinance contained the terms and provisions upon which the consolida-

tion of the street railways therein named could be made. It was accepted by the Georgia Railway & Electric Company. The proposition of the City and its acceptance by the Company constituted a contract, which contract was in existence in 1907.

The "Consolidating Ordinance" does not, in direct terms prescribe rates. It, however, contains this provision:

"The said Consolidated Company shall for the purpose of giving one continuous ride inside the City of Atlanta from a point on one of its lines to a point on another of its lines, which, however, does not carry the passenger on a parallel line or in the same general direction from which he came, grant one transfer ticket upon the payment of one full fare, provided such transfer is requested at the time of the payment of the fare."

At that time the universal fare throughout the City upon each and all of the lines embraced in the Ordinance was five cents. A "full fare" must have meant the then prevailing fare. To compel the grant of transfers and at the same time throw no restrictions upon an increase in the primary rate would have been to leave the way open to nullify the free transfer, by increasing or doubling the original and customary charge without transfers.

But whether this be the correct view as to what was a "full fare" or not, it is immaterial to a proper conclusion as to the grant of
258 the prayer of petitioner for authority to charge two cents for a transfer; to grant it, would to that extent, repeal the consolidating ordinance under which the petitioner is now operating.

The ordinances and contracts relating to rates and transfers, which from the evidence appear to us to have been physically existent on August 23rd, 1907, when jurisdiction as to street railways was conferred upon this Commission, are with the City of Atlanta as to fares and transfers within the City of Atlanta; with the town of Decatur as to fares between that town and Atlanta: with the town of Edgewood as to fares between that town and Atlanta, and with College Park as to fares to Atlanta. Transfer charges were not covered in the Decatur and College Park contracts, nor are fares or transfers, outside of the City of Atlanta covered or affected except as mentioned above.

The question as to whether the contracts physically existent were or are valid contracts is not for us to decide. This Commission is not a judicial body; and so is this true as to the validity of the City and town ordinances. On their face they purport to be ordinances. The Courts only can say whether they are valid, whether ultra vires, or not.

Our view is that when in dealing or considering dealing with the rates of a street railroad, under the terms of the Act of 1907, we come face to face with a contract or an ordinance, in existence on August 23rd, 1907, still subsisting, we are estopped until such obstacle is removed in a legal procedure before a Court of competent jurisdiction, or the General Assembly further acts.

The question before us, is not whether these cities and towns had power and authority to make contracts or pass ordinances fixing or

prescribing fares, but whether or not the General Assembly has empowered this Commission to deal with these fares, in the event it finds such contracts or ordinances actually existent.

The General Assembly, in our opinion, could have delegated such power and authority, but as a matter of fact, it appears not to have done so.

This jurisdictional question has been referred to the Special Attorney of the Commission and we have been furnished with his opinion to the effect that we are without power to set aside contracts or ordinances of the character mentioned, under the conditions of the proviso already quoted.

The Commission has adopted this opinion as its own. A copy thereof is attached to this statement and made a part hereof. (Exhibit A.)

Under the conclusion we have reached on this subject, we do not deem it wise or proper to prescribe a different fare on parts of applicant's lines, and not upon all.

259 Recommendation to City Authorities.

This Commission believes that applicant is entitled to an increase in its street car fares, and that a six cent fare would be reasonable and just, so long as existing abnormal war conditions prevail, and the justice of granting such increases by amendment to existing contracts and ordinances, is earnestly urged upon the Councilmanic authorities of Atlanta, Decatur, and College Park, with the assurance on the part of this Commission that simultaneously with the effective date of such amendment, similar provisions will be made by it as to fares in territory not included in the municipalities mentioned. The Commission does not recommend any charge for transfers.

This recommendation does not apply to the subject of fares to Camp Gordon, so long as it is used as a Mititary Camp. We have not reached a definite conclusion as to this, because of certain considerations of the national service the thousands of soldiers in that camp are rendering.

In connection with this subject it may be of value or of interest to state that the Commission has through its Rate Expert made inquiry of official sources in every City in the United States containing 100,000 population and over as to increases in street car fares granted or applications for which are pending.

There are sixty such cities.

Increases have already been granted in the following: Bridgeport, Hartford and New Haven, Connecticut; Boston, Cambridge, Fall River, Lowell and Worcester, Massachusetts; Kansas City and St. Louis, Missouri; Camden, Jersey City, Newark, Paterson and Trenton, New Jersey; Cleveland and Toledo, Ohio; Portland, Oregon; Pittsburgh, Reading and Scranton, Pennsylvania; Providence, Rhode Island; Milwaukee, Wisconsin; and Tacoma and Spokane, Washington.

Petitions to the proper authorities are now pending in Birmingham, Alabama; Los Angeles, and Oakland, California; Denver, Colo-

rado; Indianapolis, Indiana; New Orleans, Louisiana; Detroit, and Grand Rapids, Michigan; Minneapolis and St. Paul, Minnesota; Omaha, Nebraska; Albany, Buffalo and New York, New York; Cincinnati, Dayton and Columbus, Ohio; Memphis, Tennessee; Richmond, Virginia; and Seattle, Washington.

Fourteen of the Cities of this class have no rate increase petitions pending or failed to answer our inquiries.

In Georgia, the Mayor and Council of Macon, have, by ordinance, amended the franchise ordinance of that City by granting a six cent fare, in lieu of the five cent fare heretofore in effect.

This information seems to indicate that the conditions upon which the Georgia Railway & Power Company bases its application, are nation wide and not peculiar to this community.

260 Light and Power Rates.

The jurisdictional question as to street railroad fares, discussed in the foregoing, in our opinion, does not affect the issue as to electric light and power rates, nor in the remotest degree, limit the power of this Commission to deal therewith.

The existing rates in the City of Atlanta were the result of negotiations in 1912 between the City authorities and the Power Company and were then prescribed, by agreement and acceptance, in a City ordinance.

The scale of rates so prescribed by the City and accepted by the Power Company, were filed with this Commission. No request by the City or by the Company, was made of this Commission for its assent to the ordinance or contract prescribing the same, nor has this Commission at any time given formal assent thereto, or do other than recognize them as de facto rates.

Without regard however to this fact, the proviso in the Act of 1907, limiting the powers of the Commission, relates expressly and solely to street railroads.

The rates prescribed in 1912 were under vastly different conditions, affecting the cost of service, than those existing today. The Power Company's main hydro-electric development had only begun. It was not completed until 1916. Its cost exceeded estimates. It has been found necessary, recently to operate steam auxiliary plants oftener and for longer periods during the dry seasons than had been anticipated. The cost of coal has increased until the mere coal cost alone of generating one K. W. H. with steam is, today, approximately one cent. This cost is exclusive of every other item of generating, distributing and operating expense.

A careful study of the existing scale of rates shows inequalities and discriminations in the structure. Some rates are relatively low, others high. The average of rates, under the existing scale, is low.

Comparisons of electric rates prevalent in different cities is frequently misleading, and sometimes difficult because of the varying methods of stating them. Conditions prevailing in different cities are so distinctive as to seriously affect the value of such comparisons.

The character and nearness of fuel supplies; the source of gen-

erating power whether steam or water or both combined; the distance of the generating plant from the distributing market, and other local conditions, all affect the value of comparisons of prevailing rates.

There are also many prevalent theories as to rate construction. Because of the character of its business one company will build its rate structure so as to secure its largest revenues from one class or another,—another company is forced to meet peculiar or distinctive competition. Such comparisons however, bearing in mind these and similar considerations, have some value.

261 The Rate Expert of the Commission has prepared, from official sources of information, a statement of the prevailing rates in every city of the United States having a population of 100,000 or over, there being sixty such.

Because of the varying methods of stating rates, Mr. Webster has taken a representative customer of each class of customers in each city, such as residential, commercial lighting, retail power and wholesale power, and basing these upon a certain fixed relation as to installation and amount of energy consumed, (the classification being the same for each city), worked out the amount that would be paid in each city by such customers. These figures show startling differences, and considered in this manner alone, are not of much value. But the ultimate charge to the Community as a whole taking all classes of customers into consideration, is of value, and he has stated these results.

This study shows that, taking the average of all the rates, which is what the supplying company obtains for its services from the Community, Atlanta has the third lowest average rate in cities in the United States of 100,000 population and over, the figures for the three lowest being:

Los Angeles, Cal.	1.088 per K. W. H.
Oakland, Cal.	1.311 per K. W. H.
Atlanta, Ga.	1.316 per K. W. H.

The scale proposed by applicant in its petition, which we have not approved, would place Atlanta as the twelfth lowest of the cities mentioned. The aggregate additional revenue from light and power rates petitioned for is approximately $400,000.00. We have estimated under the rates which will be promulgated in our order in this application, aggregate additional revenue of approximately $190,000.00.

We consider the existing commercial lighting scale in Atlanta as high compared with the other classes; and feel constrained to revise these rates downward.

The Company has in Atlanta approximately 10,950 residence lighting customers; about 3,545 commercial lighting customers and 1,375 retail power customers.

It has in its entire territory approximately ninety wholesale (primary) power customers and twelve (secondary) wholesale power customers. It has thirty-one municipal (primary) power and sixteen seasonal power customers.

Power customers secure current because it is more economical than

other sources of power available to them. They buy it expecting to make a profit by its use. Its cost is charged, in the end, to the people who consume their products.

They are not forced to use electrical current. Steam power is available as a substitute. They are not therefore solely dependent upon electric power, and can dispense with its use whenever
262 the steam substitute is more economical. The use of electric current for lighting homes and residences is not a use for profit; it is an expense. This is true as to all artificial light in residences. The scale of prices which we shall issue provides therefore for larger percentages of increase in all power rates than in residential lighting rates.

We consider under today's conditions that the residential lighting rates in Atlanta are low and they have been slightly increased. With the exception of residence lighting rates, all of the rates of the Power Company have been heretofore stated in a complicated way, so that the average layman or citizen has difficulty in understanding them. We have undertaken to state the rates we shall prescribe, in a form more easily understood by the average customer of the Company, even if less scientifically stated. The record in this case has developed a number of low, preferential wholesale power rates.

Such preferential rates are illegal and by their discontinuance, increases will follow. The Company should never have given them. The Commission has not found it desirable, because of the numerous inequalities and discriminations found existent in the Company's present scale, to provide for additional revenue with a flat percentage increase in rates, applicable to all classes of its customers.

Much against our inclination and desire we have been compelled to make some revision in the classes, in order that discriminations might not be aggravated and perpetuated. Our utilities regulation law abhors unjust discriminations. They are inherently wrong. As far as practicable we have tried to remove them in our revision.

Emergency Rates.

The scale of rates herewith prescribed is intended to meet what we believe are legitimate needs of the applicant for additional revenue brought about by existing abnormal war conditions.

It is not intended to be accepted as permanent.

When normal conditions shall have been restored, or whenever in the opinion of the Commission desirable, a more exhaustive and detailed inquiry into the property values and the operating results of the Company, will be made and such further revision in rates as seems reasonable and just, will follow.

263 **EXHIBIT A.**

Opinion of Judge James K. Hines, Special Attorney to the Railroad Commission, on Question of Jurisdiction.

Atlanta, July 17th, 1918.

Railroad Commission of Georgia,
Atlanta, Georgia.

GENTLEMEN:

Has the Railroad Commission of Georgia, jurisdiction and power to fix passenger rates for the Georgia Railway & Power Company?

Clearly under the Act of 1907, this power is conferred upon the Commission, unless the case falls within the proviso in Section 5 of said Act.

This proviso is as follows: "Provided, however, that nothing herein shall be construed to impair any valid, subsisting contract now in existence between any municipality and any such company, and provided, that this Act shall not operate as a repeal of any existing Municipal ordinance."

If the Commission fixes passenger rates for this company, will this action impair any valid, subsisting contract, which was in existence between that company and the City of Atlanta on August 23rd, 1907, the date of the approval of said Act of 1907, which placed street car companies under your jurisdiction?

To deprive the Commission of jurisdiction in this matter, such contract must be a valid, subsisting contract; it must have been in existence on August 23rd, 1907, and the action of the Commission in fixing passenger rates for this company must impair such contract.

The "Consolidating Ordinance" of the City of Atlanta, approved Feb. 8th, 1902, is dual in its character, being both an ordinance of the City and a contract between the City and the Company, by which were consolidated the street car lines therein mentioned. This ordinance contained a proposition to the street railway, setting out certain terms and conditions upon which the consolidation of the street railways therein named could be made the acceptance of which by the street railway company constituted a contract.

City Rwy. Co. vs. Citizens' St. R. Co. 166 U. S. 557
Detroit vs. Detroit Citizens' St. Rwy. Co., 184 U. S. 368, 386, 387.

It is hardly open to question, that this ordinance and its acceptance by the Georgia Railway & Electric Company constitute a contract, which was in existence at the time the Act, enlarging the powers of the Railroad Commission, was passed.

264 Then the question arises, is this contract a valid contract? In Chapter two, Art. 6, Sec. 1, Div. 4, of the Civil Code, providing for the Charter of street railway companies, it is declared, "That no street railway, incorporated under this division, shall be constructed within the limits of any incorporated town or city with-

out the consent of the corporate authorities," and "That all such street railroad companies incorporated under this division shall be subject to all just and reasonable rules and regulations by the corporate Authorities."

Civil Code, Section 2600.

The Georgia Railway & Power Co., and its predecessors, were incorporated under this law. The Charter of the latter was granted on January 28th, 1902.

Charters and Franchises 173.

So both of these companies accepted the privileges and franchises granted them in their charters, "Subject to all just and reasonable rules and regulations by the Corporate Authorities" within whose limits they operate. This is a broad and sweeping provision. It embraces all just and reasonable regulations of both construction and operation.

Now, with this power of regulation conferred upon Municipalities this company obtained and accepted the ordinances under which it operates.

But it is contended, that the contract, if in fact there be one, between the City of Atlanta and the Street railway company, embraced in the Consolidating Ordinance, is void because the City of Atlanta was without Authority to make such contract.

It is urged that this power cannot be derived from the provision in the Constitution of Georgia, which declares that "The General Assembly shall not authorize the Construction of any street passenger railway within the limits of any incorporated town or city, without the consent of the corporate authorities."

Civil Code Sec. 6448.

It is well said in the able brief of counsel for the railway company that "The scope of permissive terms of consent may be various and the dividing line between valid and invalid conditions may be difficult of discernment."

It is true, that the city cannot name any and all conditions. It cannot impose terms and conditions which are illegal. It can not name terms which cut down and impair the charter powers of a street railway company. It can not fix terms and conditions violative of the Constitutions of this State and the United States.

The City, by its terms, can not enlarge the charter of said company. Nor can the City enlarge its own Charter powers by the terms and conditions of its consent to the construction of a street railway in its streets.

265 It is true, some authorities hold that the power to regulate rates does not appertain to the government of a city, and is not municipal in character.

Webster vs. Superior Court 67. Wash. 37.

Garner vs. Mo. & K. Tel. Co. 189 No. 83.

City of Woodburn vs. Public Service Com. (Or) P. U. R. 1917 B 967, 161 Pac. 391.

But this position does not seem to be borne out by sound reasoning. The inhabitants of a city have a vital interest in the charges of a public utility serving them. If the city can regulate them in other respects, and if a street railway can not be constructed in its streets without its consent, why can not such city reasonably and legally impose terms fixing the rates of such utility?

Under the power to make contracts which they deem necessary for its welfare, a city can make a contract for the construction of water works.

Rome vs. Cabot, 28, Ga. 50.
Heilbarn vs. Cuthbert, 96 Ga. 312.

In modern cities transportation and charges for transportation are almost as important to the welfare of their citizens as is water.

The building of scho-l houses are within the scope of the general powers of a Municipal Corporation.

Cartersville vs. Baker, 73 Ga. 686.

Then, why does not the fixing of rates, which a street car company must charge its inhabitants, fall within the general powers of a city, when such city is authorized to fix the terms upon which the street car company can construct its lines in the streets? But whether the city has the power to fix rates arising from its power to consent or refuse to consent to the construction of street railways in its streets, or not, it seems to me that it has such power in cases where street railway companies are chartered under the general law for the incorporation of such companies. As we have seen above, this law declares no street railways, incorporated thereunder, shall be constructed within the limits of any incorporated town or city without the consent of the corporate authorities and that all such street railway companies, incorporated under this law, shall be "Subject to all just and reasonable rules and regulations by the corporate authorities."

Civil Code, Sec. 2600.

At the time of the passage of the Act for the incorporation of street railways, the power to make rates for such companies had not been delegated by the legislature to the Railroad Commission. There was no agency outside of the legislature for the fixing of such rates, in each case, the incorporated towns and cities of the States would have to appeal to the legislature to fix or alter the rates of their street railway companies. So it was a most reasonable and proper thing for the legislature to do, in passing an act for the incor-ation
296 of street railways, to lodge in the towns and cities of the State, the power of general regulation over such companies, including the power to fix rates. Under their charters, the Atlanta Railway & Power Company and its predecessor took them, "Subject to all just and reasonable rules and regulations by the corporate authorities" of the towns and cities in which they operate. "All just and reasonable rules and regulations" seem to me to embrace the

power to make contracts with such companies as to the rates, which they should charge.

But it is claimed that it has been judicially determined in the case of the City of Atlanta vs. Old Colony Trust Co., 83 Fed. 39 and 88 Fed. 859, that the City of Atlanta does not possess the power to contract with the street railway company for rates and transfers.

It is true that in this case the Circuit Court and the Circuit Court of Appeals held that the City of Atlanta did not have the power, so far as the Atlanta Consolidated Street Railway Company was concerned, to initiate and fix rates for such company and to require said company to issue transfers.

The Atlanta Consolidated Street Railway Company was chartered by the Secretary of State, prior to the adoption of the general act for the incorporation of street railways by the Secretary of State, and the confirmation of its charter by the legislature afterwards took place prior to the passage of the general act for the incorporation of street railways. There was nothing in the original charter of the Atlanta Consolidated Street Railway Company or in its confirmation by the legislature which made such company subject to regulation by the City of Atlanta. So whether the City of Atlanta could regulate its fares depended upon the general law of the State in existence at that time. It is true that the Circuit Court and the Circuit Court of Appeals held in the case of the City of Atlanta vs. Old Colony Trust Company, that the City of Atlanta did not derive this power from the provision of our State Constitution, which prohibits the legislature from authorizing the construction of any street passenger railway within the streets of any incorporated town or city without the consent of the corporate authorities. This case is an authority to that extent only. We question its validity as to that extent, as we shall hereinafter undertake to show.

It is unquestionably true that the fixing of rates for public service corporations is a legislative function of the State, and, while the right to make inviolable contracts, which shall prevent the State during a given period from exercising this right, has been upheld by Judicial decisions, it has been quite uniformly held that the renunciation of a sovereign right of this character must be evidenced by clear and unequivocal terms. Such power must be expressed beyond a reasonable doubt.

Milwaukee Elec. R. & L. Co. vs. Wis. Com. 238 U. S. 174.
Los Angeles Water Co. vs. Los Angeles, 177 U. S. 538.
Walla Walla vs. Walla Walla Water Co., 172 U. S. 1.
New Orleans Water Wks. vs. Rivers, 167 U. S. 674.
267 Vicksburg vs. Vicksburg Water Wks., 206 U. S. 496.
Freeport Water Co. vs. Freeport, 180 U. S. 587.

It must be borne in mind that the question in this case is, not whether the State of Georgia has surrendered to the City of Atlanta the sovereign right to fix the rates of this company, so that the same can not be altered or changed, but whether the legislature of this State has delegated to the Railroad Commission the power to fix such

rates, where the same had been previously fixed between the City of Atlanta and the company by contract or ordinance. This distinction is of vital importance in this discussion. We repeat that the question is not, whether the State of Georgia has surrendered its power to fix these rates, but whether it has granted to the Railroad Commission of Georgia, the power to fix such rates, when the same had been fixed by contract between the city and the company, or by municipal ordinance. We do not contend that any such surrender of this governmental function has been made by the legislature to any of the towns or cities in which this company operates.

As the State has not actually divested itself of the power to fix these rates, an agreement, by which the city and this company fix these rates, is made subject to the right of the State to change the same.

L. & N. R. Co. vs. Mottley, 219 U. S. 467.
Union Dry Goods Co. vs. Ga. Public Service Corp., 142 Ga. 841.
Yate Man vs. Towers, 126 Md. 513 P. U. R. 1915 E 811.
Portland R. Light & P. Co., 229 U. S. 397.
Dawson vs. Dawson Tel. Co., 137 Ga. 62.

If no specific authority has been conferred on the city to enter into these contracts, the right of the state to interfere, whenever the public welfare demands such action, was not abrogated; but these contracts remain valid between the parties to them, until such time as the state sees fit to exercise its paramount authority.

Manitowoc vs. Manitowoc & N. Traction Co., 145 Wis. 13.
Denver & S. P. R. Co. vs. Englewood (Col.) P. U. R. 1916, E. 134.
Benwood vs. Public Service Com., 75 W. Va. 127.

In other words, in the absence of express and unequivocal authority conferred by the legislature on a city to that effect, the legislative power of fixing rates is not abrogated, but the legislature can at any time fix such rates, or alter, or abolish such contract rates. But until the state does so act, rates fixed by municipalities, granting franchises to street railway companies, where such grants are accepted by such companies, are binding.

Such contracts are permissive and valid, and are binding upon the parties until such time as the state may change such rates, or fix different rates. Such contracts are permissive contracts, but nevertheless, are valid contracts until the state acts and sets them aside.

268 Applicant admits the physical existence of a contract between the town of Decatur and the Applicant. A like contract exists between College Park and this company.

Now arises the question, whether the fixing of rates by the Railroad Commission of Georgia will impair these contracts or have the effect of repealing the respective ordinances in which they are embraced.

We will deal with the City of Atlanta first. The Consolidating Ordinance contains this provision:

"The said Consolidated Company shall for the purpose of giving one continuous ride inside the City of Atlanta from a point on one of its lines to a point on another of its lines, which, however, does not carry the passengers on a parallel line or in the same general direction from which he came, grant one transfer ticket upon the payment of one full fare, provided such transfer is requested at the time of the payment of the fare."

It is true that this ordinance does not make any direct provision as to rates. In other words, it does not name the amount which shall be paid for a fare. It provided that the company shall "Grant one transfer ticket on the payment of one full fare."

It is claimed that "There was no purpose to contract as to the rates of fares," and that "What was one full fare was not the subject of agreement."

It is further claimed that "One full fare" does not mean a five-cent fare." It is pertinently asked: "If that was meant why didn't the parties say so?" The same inquiry might be made in the case of any ambiguous ordinance or agreement; but the fact of failure to be clear and explicit in the language used in any document does not authorize a presumption for or against a given construction.

The language, "One full fare" is ambiguous. In determining its meaning we must take into consideration all the surrounding circumstances. At the time the fare was five cents. While some of the companies were authorized to charge more than five cents, they did not, in fact, charge any greater rate.

Is it reasonable to suppose that the City of Atlanta granted to the Consolidated Company the various important rights and franchises embraced in this ordinance, and left to this company the right to charge any rate of fare it saw fit, subject only to legislative regulation? Would the city grant such valuable franchises, without attempting to guard against an increase in rates?

What would a transfer ticket be worth if the company was left free to double or treble the "One full fare?"

In support of the contention that "one full fare" does not mean a five-cent fare, reference is made to the repeal of Sec. 1351 (H) of the City Code of 1899, being Sec. 5758 of the City Code
269 of 1910 by the Consolidating Ordinance. This section was a part of an ordinance passed on August 22, 1899, and provided that "no person, firm, corporation or association hereafter obtaining authority or consent to construct or operate a line or system of street railways in the limits of the City of Atlanta, as now or hereafter defined, shall be permitted to collect for fares for single passengers from one point of the line or system of such company in the City limits as aforesaid, more than for one continuous trip from 12 P. M. to 5 A. M. ten cents."

It may be asked why the city should repeal this ordinance which prescribed a five-cent fare from 5 A. M. to 12 P. M. practically all day, if it was not the purpose to show that the city and the com-

pany both understood that they were not contracting for a five-cent fare.

The purpose of the city might have been to get rid of the ten-cent fare from 12 P. M. to 5 A. M.

At the time the Consolidated Ordinance was passed there were two other ordinances of the City of Atlanta embraced in the City Code of 1899, being sections 1335 and 1336. These ordinances appear as sections 2721 and 2722 in the City Code of 1910. Section 1335 provides that from and after the first day of May, 1897, it shall be unlawful for any company operating electric or other railways upon the streets of Atlanta to charge more than five cents for the transportation of any person from any point on said line or lines to any other point or points on any line or lines operated by said company, whether the same be for continuous passage on through lines, or by transfer to any other line or lines.

The ordinance, from which sections 1335 and 1336 of the Civil Code of 1899 were codified, was enacted in 1897. If it were the purpose of the City not to contract for a five-cent fare, why was it that this section of the City Code was not repealed? It was left on the statute book of the city. By the repeal of 1351 (H) of the Civil Code of 1899 the city got rid of the ten-cent fare from 12 P. M. to 5 A. M. By the retention of section 1335 of this code the city retained, or attempted to retain, the five-cent fare with transfers during all hours of the day. Furthermore, section 1336 uses the language, "Upon the payment of one full fare, as above provided, it shall be the duty of the said railway company to transport such passenger to his destination upon any line or lines of said company, and to furnish a transfer ticket without additional charge, whenever it is necessary for said passenger to change to the car of any line or lines operated by said company, in order to reach his said destination."

These two sections furnish a definition of the language, "One full fare" used in the Consolidating Ordinance, and make the term mean a five-cent fare.

But whether or not this construction of "One full fare" is correct or not, it is immaterial to the proper conclusion to be reached in this matter.

The street railway company asks for a six-cent fare within the city limits of Atlanta and two additional cents for each transfer. So clearly, if the Commission grants the application of the street railway company, its action will impair this contract between the city and the street railway company, and will pro tanto repeal the Consolidating Ordinance under which the street railway company is now operating.

There is no question that if the application of the street railway company is granted by the Commission, this action will amount to an impairment of the contract between the cities of Decatur, College Park and Edgewood on the one part and the street railway company on the other part.

Where the company accepted and acted upon a franchise to fix its maximum fare, the Railroad Commission of Vermont has no

jurisdiction under the act of that State giving the Commission jurisdiction over the matter of tolls and rates, except where governed by special provisions of law.

Barre vs. Barre and M. Traction & Power Co. 92 A. 237.

So, in my opinion, the Railroad Commission of Georgia is without jurisdiction to fix the rates within the City of Atlanta, and the rates from and to the other cities above mentioned, so as to alter or change the rates prescribed in the contracts between the company and these cities. The only tribunal, which can change these rates is the legislature of Georgia, the latter having excepted from the grant of power to this Commission the right to impair these contract rates or to repeal ordinances under which they were fixed.

The Commission has jurisdiction over the matter of transfers outside of the City of Atlanta, except where this matter is specially controlled by the contracts between the company and the other cities above refered to. The Commission can provide fares higher than five cents on the Decatur line between the hours of 12 o'clock midnight and 5 o'clock A. M. The Commission has power to regulate the matter of transfers on the line from College Park to Atlanta. The College Park contract only provides that there shall be no greater fare than five cents for each passenger from the southern limits of College Park to some central point in the City of Atlanta. Therefore, the Commission can provide extra compensation for transfers to and from College Park.

Clearly, the Commission has power and jurisdiction to fix fares for transportation of passengers in the territory lying outside of the City of Atlanta in those cases where these fares are not controlled by said contracts hereinbefore referred to.

There is no question over the power of the Commission to fix gas, electric light, heat and power rates.

It seems to me that the Commission, which has no judicial functions, should go slowly in declaring contracts and municipal ordinances null and void; and that in all cases the doubt should be resolved in favor of the validity of such contracts and ordinances.

271 The conclusions herein reached are not free from doubt, but represent the best opinion which I have been able to form after careful study of the able briefs of counsel for the applicant, and from an investigation of the authorities at my command.

(Signed) JAMES K. HINES,
Special Attorney.

272 (*Demurrer to Answer & X-bill.*)

GEORGIA,
Fulton County:

Now comes the complainant in the above stated case challenging the sufficiency of the allegations of the defendant's cross-bill for the granting of the relief therein prayed for; and demurs to the same, both generally and specially, upon the grounds now to be set forth.

1. That this court does not possess the power, either in law or in equity, to make a primary investigation into the reasonableness or unreasonableness of defendants' rate of charges that the exclusive power to declare what is a just and reasonable rate of transportation has been vested in the railroad commission of Ga.; that the only power of the courts over reasonableness of rates is in reviewing the legality of orders of the railroad commission in fixing just and reasonable rates of charges; that the railroad commission has been given exclusive jurisdiction in the matter of fixing rates; that while courts of equity have full right or review of such orders of the railroad commission, with full power to enjoin any order allowing confiscatory rates, or rates granted illegally and without due process of law, and rates which when enforced would result in the taking of private property for public use without just compensation, they have not the power nor have they heretofore ever assumed the power primarily to fix and regulate the rates of public utilities.

2. That it appears from the cross-bill that the rate fixed as to College Park and Decatur were only a part of a general body and schedule of rates affecting defendants' entire system of street railway, including its system of electric lighting; that it thus appearing that the College Park and Decatur rate was fixed in connection with a general body of rates this court does not have the power, nor would it seem to be the inclination of a court of equity
273 to segregate the College Park rate from the rest of the rates authorized by the commission in connection with the general body of rates granted on defendants' entire system; that the correctness and validity of the order of the railroad commission in approving this general body of rates can only be supervised and reviewed by a full consideration of the whole body of rates fixed by the commission and in full purview of all the facts and circumstances upon which its order was predicated; that no sufficient facts are set forth in the cross bill to show or convince that the College Park rate is unreasonable, unjust, uncompensatory, or confiscatory; that so far as the facts alleged are concerned it may be well concluded that any alleged loss or service below cost was cared for by the commission in the allowance of the remaining parts of said general body of rates; that defendants have no standing in court to attack any rate, particularly the rate fixed on the College Park line, as being discriminatory, that said defendants are in no wise concerned with questions of discriminations, except so far as their own rights are concerned with the rights of other like public utilities; that the fact that a certain rate granted to the public, as to a certain line of street railways, is discriminatory as to the public affected by other rates of other parts of the general system, only gives a right to the members of the latter public to complain; and that the defendant has no standing in court to raise this question; the only concern it has is to see that the general body of rates prescribed for it by the commission is granted under due process of law and does not have the effect of taking its property without just compensation.

3. That it appears from said cross-bill that the rate upon the College Park line, against which its complaint is aimed, has not been attacked in any court heretofore; moreover it appears that the
274 general body of rates on all other lines than those of Decatur and College Park, have since the fixing of the rate complained of been again increased so that the same now is seven cents, an addition of one cent per passenger over the rate fixed in the body of the rates, a part of which is complained of; and that to review or supervise that rate fixed for the College Park line and the Decature line would require in addition to the facts disclosed upon the former hearing of the railroad commission the facts disclosed upon the latter hearing, that it appears that instead of attacking the six cent body of rates or any part thereof, the said defendants have put in operation and kept in operation the rates therein prescribed, until the seven cent body of rates was put in operation under the latter order of the railroad commission; that being true the said defendants have been guilty of such laches and have altered the facts and circumstances considered by the railroad commission in the hearing of the six cent body of rates in such manner as to produce any effort on the part of this court or of any other court to pass upon the correctness and legality of the order of the railroad commission fixing the six cent body of rates.

4. That the facts set forth in the said cross bill do not lead to the conclusion that the general body of rates fixed either in the order for the six cent body of rates or the seven cent body of rates do not allow defendants a sufficient and legal and constitutional return upon the value of their properties devoted to the public use throughout their entire system of public utilities; that they do not show by any facts alleged that either of said bodies of rates are non-compensatory or confiscatory; that they show *on* reason why they should have in addition to the net returns accruing to their revenue from an application of either the six cent body of rates, including the College Park and Decatur rate, or the seven cent body of rates, including
275 the College Park and Decatur rate, the additional revenue which would accrue to them by increasing the College Park and Decatur rate from that fixed by the commission, as well as by their contract, to a rate of seven cents per passenger; that the presumption is that the granting of both of said bodies of rates under the facts and circumstances considered by the commission allowed them a sufficient and legal return upon the property devoted to the public use throughout their entire system, and they allege no facts showing that such presumption is not now conclusive.

5. That if any effort is made by the defendants to arrest the full operation of the College Park and Decatur rate, as fixed by the commission and by their contracts, such effort can only predominate by bringing to the attention of this court all of the facts and circumstances which go to make up the rates on their entire system; that no such facts are alleged in the cross-bill and the same is insufficient to the granting of the relief therein prayed for.

6. That in said cross bill no *effect* whatsoever is made to lay before this court the facts and circumstances which induced the commission in the making of the six cent body of rates, including the College Park rate, so as to permit this court to supervise or review the correctness of said order of the commission.

7. That this court has no inherent jurisdiction to pass upon the primary question of the reasonableness or unreasonableness of rates, this being a question of fact only within the jurisdiction of the railroad commission under the statutes of the State; that the only inherent power possessed by this court under the statutes and laws of this State, with reference to rates, is a question of law, to wit:

"Whether the order of the railroad commission fixing certain
276 rates is illegal, in that it is confiscatory and non-compensatory; that no such question is presented to this court by the facts disclosed by the cross-bill; the same being only an effort to have this court pass upon the reasonableness of rates as a primary proposition involving only a question of fact of discretion; and complainant respectfully contends to the court that it has no such power.

Wherefore, it prays the judgment of the court and that said cross bill be stricken, and all allegations of the answer as to unreasonableness and discriminat*ory* be stricken.

A. E. BROOM,
Pl'ff's Atty.

Filed in office this the 4th day of Nov., 1920.
W. L. VENABLE,
Deputy Clerk.

(*Amended Answer.*)

GEORGIA,
Fulton County:

And now comes the defendants, and, by leave of court, amend their answer filed in the above stated cause as follows:

1. (*a*) The contract as to fares alleged is not a subsisting binding contract, under which defendants can be held to charge confiscatory rates.

(*b*) Said contract, if ever binding, was one at will and has been terminated by reasonable notice given by defendants, and has been abrogated by subsequent municipal and state action.

(*c*) Neither the plaintiff nor the defendants had any right, power or authority to make any binding contracts as to fares. Under the constitution of the State, as set out in code sections 6389, 6463, 6464 and 6467, neither of the parties hereto can make any rate
277 agreement for fixed, irrevocable fares, especially if such fares are or should become, as they have become in this case, confiscatory, in violation of the fourteenth amendment to the constitution of the United States.

2. If the alleged contract should be held by the courts to be legal and binding between the parties, and if the courts should hold that the act of 1906 (Ga. Laws 1906, page 650) extended the said alleged contract to the added territory of College Park, so as to extend the claimed contract for a five cent fare over such territory, and that other subsequent acts and orders of the commission, are as contended for by plaintiff, the said acts and orders, having the effect of acts would, and do, impair the obligation of contracts in contravention of article 1, section 10, of the constitution of the United States, as hereinafter set out and explained.

3. Under the constitution of Georgia "The general assembly shall not authorize the construction of any street passenger railway within the limits of any incorporated town or city without the consent of the corporate authorities."

On Nov. 6, 1905, the city of College Park, a municipal corporation of the State of Georgia, upon petition of the Georgia Railway & Electric Company (a street railway company and the predecessor in title of the Georgia Railway & Power Company) granted to the said electric company a permission (hereinafter called a franchise) to lay a double track upon one of its then streets, in said ordinance the following provision was made as to fares:

"That no greater fare than that of five cents for each passenger be charged for passage from the southern limits of said city of College Park to some central point in the city of Atlanta."

A five cents fare was charged up to the filing of this suit and, under injunction in this case, is now being charged.

278 4. Under the statutes of Ga. no street or suburban railway can lay its tracks in the public roads of any county in said state without consent of the proper authorities of said county.

5. On August 7, 1901, the court of Fulton (in which are located the towns of East Point and College Park) upon petition of the Atlanta Railway & Power Company (the predecessor of the Ga. Ry. & Power Company, granted that company and its assigns "the right to lay, maintain and operate an overhead electric railway, with necessary turnout and switches along and upon the East Point road between the limits of the towns of East Point and College Park." Right to double track same was granted to the Georgia Railway & Electric Company by the county of Fulton on November 13, 1905.

What is here design-ed as the East Point road is the public road running from the city of Atlanta through East Point and College Park, and into the country *sought* of College Park. It is called the limits of College Park a street, and it is the same street upon which the double track was permitted by College Park, as above stated.

6. In these grants by Fulton county there were no provision as to fares, although there were other conditions as to manner and time of construction. These grants were accepted by the railway company and tracks were built thereunder and in operation until this

date, from the city of Atlanta through East Point, over the granted road, through College Park.

7. On August 20, 1906, by act of the legislature (Ga. Laws 1906, page 650 et seq.) the corporate limits of College Park were extended from the prior corporate limits north 780 feet along the East Point road toward the city of Atlanta, thereby including within the limits of College Park 780 feet of the East Point road already then occupied by the defendants' track under the Fulton county grants of
279 August 7, 1901, and November 13th, 1905.

8. Prior to the acts of 1907 (Ga. Laws 1907, page 73 et seq.) the railroad commission of Georgia had no jurisdiction over street railways. Such companies had, prior to that time, always fixed their own fares, but in that year the legislature extended the commission's jurisdiction so as to include street railways, except that the commission was denied the power "to impair any valid, subsisting contract now (then) in existence between any municipality and any such company."

9. Prior to 1918, the company had, before 1907, and after that date, charged a flat fare of five cents. On April 2nd, 1919, the railroad commission permitted the defendants to charge a fare of six cents over all its lines, including the East Point road aforesaid, except as to that part of the College Park and the North Decatur lines covered by the alleged contract and by a later order of the commission a seven cent fare was permitted on all their lines except as to College Park and the Decatur lines covered by the alleged contract.

10. Before the decisions of the commission fixing six and seven cents fares, a five cent fare was charged over the street railway system and to all passengers entering and alighting from the cars within the corporate limits of College Park, including the 780 feet added by the act of 1906 along the East Point road. After the commission's decision and on the 5th day of Oct., 1920, defendants notified the city of College Park that if there was any contract between defendants and said city of College Park, it was one at will and that it would be terminated on the 20th day of Oct., 1920, and that thereafter a seven cents' fare would be charged and collected. To prevent that the present bill was filed and the present preliminary injunction granted, preventing the increased fare and maintaining the
280 five cents fare, not only as to the old limits of College Park, but as well to the 780 foot addition.

11. Defendants allege that if the courts hold that the effect of the said act of 1906 is to extend, by virtue of the claimed contract supra, between the defendants and College Park, the five cents fare over the 780 foot addition, then said act will impair the obligation of the contract between defendants and College Park for under that contract, defendants were to charge only five cents "from the southern limits of said city of College Park to some central point in the city of Atlanta," and it is an extension and violation of the contract to

extend this five cents fare from and to the 780 feet not then a part of College Park; and such act thus construed will violate article 1, section 10, of the constitution of the United States, preventing impairment of contracts by any State.

(*f*) If said act of 1906 shall be construed to add the territory there added to College Park to the five cents area provided for in said claimed contract, then said act would impair the obligations of the contracts between the defendants and the county of Fulton. If the consent given by College Park was a binding legal contract, the consent of the county of Fulton as to the 780 feet was also a binding legal contract. In the county consent contracts there were no provision that only a five cents' fare should be charged, and by adding to the Fulton county contracts the condition that the five cents provision is to be enforced in the added territory, the effect would be to impair the county's contracts, and to that extent violate article 1, section 10, of the United States constitution, prohibiting States from impairing contracts.

(*g*) If the courts shall so construe the act of 1907 (page 73 et seq.) the excepting from the commission's control all valid
281 subsisting contracts between street railways and municipal corporations, so as to except from the commission's control all points without the city of College Park to all parts of College Park, and from all parts of College Park, except its southern limits, to all points without College Park, then said act of 1907 impairs the contract between College Park and these defendants and violates article 1, section 10, of the constitution of the United States.

The commission has fixed fares of seven cents as to the whole railway system except as protected by said claimed contract and to prevent the charge of seven cents from and to the points above stated, the court must find that those points are taken from the commission's jurisdiction by the act of 1907.

(*h*) If the courts shall construe the orders of the commission fixing the six and seven cents fares to except from the operations of these orders, fares from and to any points except the fare from the southern limits of College Park to some central point in the city of Atlanta, then such orders of the commission will impair the obligations of the contract between College Park and these defendants, thereby violating article 1, section 10, of the United States constitution.

(*i*) The claimed contract between College Park and defendants, supra, made no provision as to transfers but only a straight five cents fare. For years prior to the war defendants charged five cents and gave transfers over the whole system, including College Park. Defendants desired to discontinue said practice of giving transfers, same not being demanded by the claimed contract, and permission to do so was asked of the railroad commission; but said commission declined the request and ordered defendants to continue to issue transfers, thereby adding this condition to the claimed contract; and this

practice was continued until the 5th day of October, 1920,
282 when defendants notified College Park that it was their purpose to discontinue said practice. To prevent that this suit was brought and the restraining order granted.

(*j*) Defendants allege that this order of the commission impaired their contract with College Park. It was no part of that contract to grant transfers, and if this court holds said contract valid, then said order, in increasing the rate of fares by adding transfers, impairs the obligations of said contract, and in so doing violates article 1, section 10, of the United States constitution.

(*k*) The five cents fare of the claimed contract is confiscatory, also twice found to be so by the railroad commission after exhaustive hearings. The judicial enforcement of this five cents fare in the College Park territory, in the absence of a contract between the parties, would clearly be illegal and in violation of the fourteenth amendment to the constitution of the United States which prohibits the State from depriving any person of life, liberty or property without due process of law, and from denying to any person within its jurisdiction the equal protection of the laws.

(*l*) When complaint is made that property is being confiscated and when such confiscation is sought to be executed by producing a contract permitting it, the federal courts, as well as all other courts, will for themselves, and independently, look to see whether there is, in fact, such a claimed contract, and if no such contract is found the confiscatory rate will not be enforced.

(*m*) Defendants allege that there is no subsisting legal, binding contract between them and College Park. Neither the city nor these defendants had the power to make such a contract, either by charter or by the general laws of the State of Ga.

283 (*n*) Such a contract would violate article 4, section 2, par. 1, of the constitution of the State (Code Sec. 6463), which restricts to the legislature the power to fix freight and passenger tariffs, and denies such power to cities and street railroads.

(*o*) Said contract violates article 4, section 2, par. 2, of the state constitution (Code sec. 6464) which provides that: "The police power of the State shall never be abridged, nor so construed as to permit corporations to conduct their business in such a manner as to infringe the equal protection of individuals or the general well being of the State." The claimed contract of indefinite duration for a fixed fare, no matter what change of conditions, clearly violates this provisions of the constitution.

(*p*) Said contract also violates article 1, section 3, par. 2, of the State constitution (Code sec. 6389), which provides that: "No bill of attainder, ex post facto law, retroactive law, or law impairing the obligation of contracts, or making irrevocable grants of special privileges or immunities, shall be passed." This claimed contract,

in words, insures irrevocable grants of special privileges and immunities, in the teeth of this provision.

(*q*) These defendants allege, as shown supra, that this claimed contract is clearly illegal, void and non-subsisting, and that it will not preclude the federal courts, as well as all other courts from exercising their jurisdiction to enforce the fourteenth amendment, if so, *is* can be defeated by anything in the form of a contract, no matter how illegal or invalid.

(*r*) Defendants allege that the claimed contract, when made (if ever it was) was made with reference to the quality and quantity of service then in force. To increase the quantity or quality of the service is to increase the cost of the service, and a forced in-
284 crease of the quantity or quality of the service, the contract remaining in force, is to impair the obligations of the contract between the parties. If the court construes (as it must if it makes this injunction permanent) the act of 1907, pages 73 et seq. so as to give the railroad commission power to increase the quality and quantity of service, then the contract between the parties will be impaired, in violation of article 1, section 10, of the United States constitution, against the impairment of contracts by the State.

(*s*) The railroad commission has, by orders, increased since the act of 1907, the quantity and quality of the service in, to and from College Park. If the court does not so construe the act of 1907, then the orders of the commission being the acts of the State, by increasing the cost of service, violates and impairs the contract between the parties in violation of article 1, section 10, of the United States constitution, prohibiting the impairment of contractual obligations by the State.

J. PRINCE WEBSTER,
ROSSER, SLATON, PHILLIPS AND HOPKINS,
COLQUITT AND CONYERS,
Attys. for Defts.

GEORGIA,
Fulton County:

Before me personally appeared P. S. Arkwright, president of the Georgia Railway & Power Company who upon oath deposes and says that the facts stated in the above and foregoing amendment are just and true as they stand stated. Deponent further swears that at the time of the filing of the original answer in the above and foregoing case the new facts of defense herein set out in this amendment to the answer were not omitted for purpose of delay, and that this amendment is not offered for delay.

P. S. ARKWRIGHT.

Sworn to and subscribed before me, this 2nd day of November, 1921.

B. T. SIMPSON, [SEAL.]
N. P., Fulton Co., Ga.

285 GEORGIA,
Fulton County:

Before me personally appeared W. H. Wright, secretary of the Georgia Railway and Electric Company, who upon oath, deposes and says that the facts stated in the above and foregoing amendment are just and true as they stand stated.

Deponent further swears that at the time of filing the original answer in said case the new facts of defendants hereinabove set out in this amendment to the answer were not omitted for the purpose of delay, and that this amendment is not offered for delay.

W. H. WRIGHT.

Sworn to and subscribed before me, this 2nd day of November, 1921.

B. T. SIMPSON, [SEAL.]
N. P., Fulton Co., Ga.

Allowed and ordered filed subject to demurrer. Nov. 3rd, 1921.
J. T. PENDLETON,
Judge S. C. A. C.

Service of the within amendment acknowledged, copy received. This Nov. 3, 1921.

GEO. P. WHITMAN,
Atty. for Plff.

Filed in office this the 3rd day of Nov., 1921.
T. C. MILLER.
D. Clk.

Demurrer and Motion to Strike of Plaintiff.

GEORGIA,
Fulton County:

And now comes mayor and council of the city of College Park, plaintiff in the above stated case, and files and interposes this, its demurrer to and motion to strike the original answer and cross bill of Georgia Railway & Power Company, and Georgia Rail-
286 way & Electric Company, defendants therein, and also the amendment of defendants to their said answer, which amendment was allowed and ordered filed, subject to demurrer, on Nov. 3d, 1921; and also said answer and cross bill as amended by said amendment; said defendants having had allowed and ordered filed, subject to demurrer, and having filed, on November 3d, 1921, an amendment to their said answer and cross bill; and for grounds of demurrer and motion to strike and cause thereof, says as follows:

1. Plaintiff demurs to and moves to strike said original answer and cross bill on the ground that same does not set forth sufficient facts to constitute any defense in law or equity to the petition of plain-

tiff or to the relief prayed by plaintiff in said case or any part o same.

2. Plaintiff further demurs to and moves to strike said origina answer and cross bill on the ground that the allegations thereof ar insufficient in law or equity to authorize the grant of any of th relief prayed by defendants, and are also insufficient in law o equity to constitute a cause of action or to show any right of relie against plaintiff, as prayed by defendants in said answer and cros bill.

3. Plaintiff further demurs to and moves to strike said origina answer and cross bill on the ground that defendants and each o them are concluded as to the matters and things sought to be allege therein by way of answer and as cause for relief against plaintiff by the decision, ruling and judgment of the Supreme Court of Ga. and of this court in the case of Ga. Railway and Power Compan against Railroad Commission of Ga., et al., reported in 149 Ga page 1.

4. Plaintiff demurs to and moves to strike paragraphs twenty- seven to fifty-five both inclusive, of said original answer and cro bill, and each and all of the allegations thereof, on the ground tha the same do not set forth sufficient facts to constitute a de-
287 fense in law or equity, in whole or in part, to plaintiff's petition, or to the relief prayed by plaintiff in said case, o any part of same; and on the further ground that said paragraph and the allegations thereof do not set out any such defense.

5. Plaintiff further demurs to and moves to strike paragraph twenty-seven to fifty-five, both inclusive, of said answer and cross bill, and also the prayers thereof, on the ground that same do not set forth sufficient facts or show any right, in law or equity, to authorize the relief prayed by defendants or any part of same, against plaintiff; and on the further ground that said paragraphs and the allegations thereof are insufficient in law and in equity to constitute a cause of action or show any right of relief against plaintiff, as prayed by defendants.

6. Plaintiff further demurs to and moves to strike said original answer and cross bill as to paragraphs twenty-seven to fifty-five, both inclusive thereof, and also the prayers of said answer and cross bill, on the ground that defendants and each of them are concluded as to the matters and things sought to be alleged therein by way of answer and as cause of relief against plaintiff by the decision, ruling and judgment of the Supreme Court of Ga., and of this court, in the case of Ga. Ry. & Power Co. against Railroad Commission of Ga. et al., reported in 149 Ga. page 1.

7. Plaintiff demurs to and moves to strike the amendment of de fendants filed in said case, subject to demurrer, on November 3rd 1921, and each and all of the allegations thereof, on the ground that same fail to set forth sufficient facts to constitute a defense, in law

or equity, to plaintiff's petition or alleged cause of action in said case, or to the relief prayed by plaintiff in said case, or any part of same, and on the further ground that said amendment does not set forth any such defense.

288 8. Plaintiff demurs to and moves to strike said amendment, filed on November 3rd, 1921, by defendants as aforesaid, on the further ground that said amendment and the allegations therein contained do not set forth any cause of action, or show any right, either in law or equity, against plaintiff, to authorize the grant of any of the relief prayed by defendants.

9. Plaintiff demurs to and moves to strike said amendment, filed on November 3rd, 1921, as aforesaid, by defendants on the ground that defendants and each of them are concluded as to the matters and things sought to be alleged therein, by the decision, ruling and judgment of the Supreme Court of Ga., and by this court, in the case of Ga. Ry. & Power Company against Railroad Commission of Ga. et al., reported in 149 Ga. page 1.

10. Plaintiff demurs to and moves to strike said original answer and cross bill, as amended by said amendment, filed Nov. 3rd, 1921, on the ground that the same do not set forth any defense, in law or equity, against plaintiff's petition or alleged cause of action, nor to any of the relief prayed by plaintiff, and on the further ground that the same do not set forth any cause of action against plaintiff, and do not show any right on the part of defendants or either of them to any of the relief prayed by defendants against plaintiff, and on the further ground that defendants are concluded as to the matters and things therein sought to be alleged by way of answer and as cause for relief against plaintiff, by the decision, ruling and judgment of the Supreme Court of Ga., and of this court, in the case of Ga. Ry. & Power Company against Railroad Commission of Ga. et al. reported in 149 Ga. page 1.

11. Plaintiff demurs to and moves to strike each and all of the allegations of paragraphs two, eight, nine, ten, fifteen, sixteen,
289 eighteen, nineteen and twenty-six of said original answer and cross bill, except insofar as the allegations thereof either specifically admit or specifically deny the allegations of paintiff's petition to which they are respectively directed, or alleged that for want of sufficient information defendants can neither admit nor deny the paragraph or allegations to which such answer is made; on the ground that the allegations so demurred to and moved to be stricken, are irrelevant and immaterial in law or equity to any defense or right of relief on the part of defendants, and are also insufficient in law or equity to constitute any defense or show any right to any of the relief prayed by defendants; and on the further ground that said allegations do not, either separately or together, or otherwise, set forth sufficient facts to constitute a defense, in law or equity, to plaintiff's petition or alleged cause of action, nor to authorize any of the relief sought by defendants.

Wherefore, plaintiff prays that this its motion to strike and demurrer be sustained and said answer and cross bill and said amendment be stricken.

GEO. P. WHITMAN,
Atty. for Plf.

Filed in office this the 18th day of January, 1922.

J. S. HOLLIDAY,
D. Clk.

The demurrer of the plaintiff to the answer and cross bill of defendants, filed November 4th, 1920, and the within demurrer and motion to strike of the plaintiff to defendant's said answer and cross bill and to defendant's amendment thereto, which amendment was filed on November 3rd, 1921, and to defendant's said answer and cross bill as amended by said amendment, coming on regularly for a hearing, the same are after hearing thereon hereby sustained and said answer and cross bill and said amendment to said anwser and cross bill as amended are stricken and dismissed, except only
290 in so far as same either specifically admits or denies the allegations of plaintiff's petition, or specifically allege that for want of sufficient information the allegations of said petition are neither admitted and denied.

In open court this January 18, 1922.

GEO. L. BELL,
Judge S. C. A. C.

(*Verdict.*)

We, the jury, find in favor of the plaintiff Mayor and Council of the City of College Park, and against the defendants, Georgia Railway & Power Company and Georgia Railway and Electric Company in the issues in this case, and that plaintiff is entitled to the relief prayed for by it.

This January 18, 1922.

T. J. MOORE,
Foreman.

(*Decree.*)

The jury in the above stated case having found the issues in said case in favor of the plaintiff, and that plaintiff is entitled to the relief prayed for by it, it is therefore considered, ordered, adjudged and decreed by the court that the injunctions is granted as prayed for in the petition of the plaintiff and that the amendment thereto and said injunction is hereby made permanent; and it is further ordered and decrees that the defendants Georgia Railway & Power Company and Georgia Railway & Electric Company, their officers, agents, employes and servants be and they are hereby permanently restrained and enjoined in all respects and particulars as praved for by plaintiff in its petition and amendment thereto and all the relief prayed for in said petition and the amendment thereto, is hereby granted.

91 It is further ordered and decreed that plaintiff do have and recover of defendants for use of officers of court — llars costs.

In open court this January 18th, 1922.

GEO. L. BELL,
Judge S. C. A. C.

TATE OF GEORGIA,
County of Fulton:

I hereby certify, That the foregoing pages, hereunto attached, ntain a true transcript of such parts of the record as are specified the bill of exceptions and required, by the order of the presiding dge, to be sent to the Supreme Court in the case of Georgia Rail- ay & Power Co. et al., plaintiff in error, v. Mayor and Council of ity of College Park, defendant in error.

Witness my signature and the seal of court affixed, this the 13 ay of Feb., 1922.

[SEAL.]

ARNOLD BROYLES,
Clerk Superior Court Fulton County, Georgia,
ex Officio Clerk City Court of Atlanta.

[Endorsed:] Case No. 3081. March Term, 1922. Supreme Court f Georgia. Georgia Ry. & Power Co. et al. versus Mayor, etc., of ollege Park. Transcript of Record. Filed in office Feb. 15, 1922. . E. Talley, D. C. S. C. Ga.

92 Clerk's Office, Supreme Court of Georgia.

Atlanta, Ga., June 28, 1922.

I hereby certify that the foregoing pages hereto attached contain he original writ of error and the original citation, and also true nd complete copies of the parts of the record specified in the ræcipe in the case of Georgia Railway & Power Co. et al., plaintiff in rror, vs. Mayor, etc., of College Park, defendants in error, the same eing case No. 3081, March Term, 1922, of the Supreme Court of eorgia, as appears from the records and files of this office.

Witness my signature and the seal of the Supreme Court of the tate of Georgia hereto affixed the day and year first above written.

[Seal of Supreme Court of the State of Georgia.]

Z. D. HARRISON,
Clerk Supreme Court of Georgia.

Endorsed on cover: File No. 29,014. Georgia Supreme Court. erm No. 464. Georgia Railway & Power Company, Georgia Rail- ay & Electric Company, J. D. Malsby, et al., Plaintiffs in Error, . The Mayor and Council of the City of College Park. Filed July h, 1922. File No. 29,014.

APR 24 1923
WM. R. STANSBURY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

No. 464.

GEORGIA RAILWAY & POWER CO. ET AL., PLAINTIFFS IN ERROR AND PETITIONERS IN CERTIORARI.

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, DEFENDANT IN ERROR AND RESPONDENT IN CERTIORARI.

SUPPLEMENTAL BRIEF OF DEFENDANT IN ERROR AND RESPONDENT IN CERTIORARI.

This court recognizes that State appellate courts differ in their decisions as to the effect upon second appeal, of a judgment on first appeal in the same case; some adopting the rule of "law of the case," which is merely a practice generally to refuse to reopen what has been decided, and others, the stricter rule of *res adjudicata*. And this court deems the highest court of the State the final judge in this matter.

King *vs.* West Virginia, 216 U. S., 92.

The Georgia law as to the existence of contract and the nature thereof, is similar to that obtaining in other jurisdictions.

Scranton *vs.* Public Service Commission, 268 Pa. St., 192.

Collingsdale *vs.* Philadelphia Rapid Transit Co., 274 Pa. St., 124, holding

that act requiring approval of municipal contracts by utility commission did not relate to contract made prior to its enactment.

And the Georgia State court view has the support of a Federal court in that State.

Mercantile Trust Co. *vs.* College Park R. Co. (N. D. Ga.), 101 Fed., 347.

A public-utility corporation is not only subject to the conditions upon which its special franchises are granted, but is also subject to the obligations of its charter, and must discharge the public duties which, where in the value of its business, such as supplying reasonably adequate facilities, even though by doing so, some pecuniary loss may result.

Missouri Pac. R. Co. *vs.* Kansas, 216 U. S., 262, 278.

Northern Pac. R. Co. *vs.* North Dakota, 236 U. S. 585, 595.

Hocking Valley R. Co. *vs.* Public Utilities Com., 92 Oh. St., 9, and cases cited.

Assuming there is no valid contract, the College Park line being a part of a system of street railways and operated as such (Record, p. 59), the question whether the rate, or transfer orders, or service orders, are confiscatory or otherwise

arbitrary within the inhibition of the 14th Amendment, is not to be determined alone with reference to the College Park line, but with respect to the entire system; and it was not and is not contended that the system earnings are unremunerative.

Puget Sound Traction Co. *vs.* Reynolds, 244 U. S., 238, distinguishing principle of

Northern Pac. R. Co. *vs.* North Dakota, 236 U. S., 585,

and of the subsequent decisions following that case, which are cited by plaintiffs in error in their brief, pages 40, 52. See also District of Columbia *vs.* Capital Traction Co., 41 App. D. C., 115.

Plaintiffs in error complain only of transfer orders with respect to transfers issued to passengers boarding cars in College Park for use on lines other than the College Park line. If any line is without compensation for service rendered on such transfers, is not the College Park line? Its contract is not impaired.

Detroit United Railway *vs.* Detroit, 248 U. S., 429, 436.

Furthermore, the contract creates no obligation respecting the expense, if any, which the transfer orders entail, and there is, therefore, no impairment of the obligation of the contract.

See Grand Trunk Western R. Co. *vs.* R. R. Com., 221 U. S., 400.

The plaintiffs in error cannot surrender their franchise and cease operation.

Columbus Railway Co. *vs.* Columbus, 249 U. S., 399.

They operate not only under the consent franchise of the municipality, but also under franchises from the State (Record, pp. 128, 133), and they cannot surrender either to the municipality or the State Railroad Commission, but only to the State in such manner as the Legislature of the State may prescribe.

Railroad Commission *vs.* Macon Railway & Light Co., 151 Ga., 256.

Respectfully submitted,

GEO. P. WHITMAN,
Attorney for Defendant in Error and Respondent in Certiorari.

Office Supreme Court, U. S.
FILED
DEC 18 1922
WM. R. STANSBURY
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

No. 464.

GEORGIA RAILWAY & POWER COMPANY, ET AL., PLAINTIFFS IN ERROR AND PETITIONERS IN CERTIORARI.

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, DEFENDANT IN ERROR AND RESPONDENT IN CERTIORARI.

On writ of error and petition for certiorari to the Supreme Court of the State of Georgia.

MOTION BY PLAINTIFFS IN ERROR AND PETITIONERS IN CERTIORARI TO ADVANCE

WALTER T. COLQUITT
J. PRINCE WEBSTER
LUTHER Z. ROSSER
ATTORNEYS FOR MOVANTS,
PLAINTIFFS IN ERROR
AND
PETITIONERS IN CERTIORARI.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922

GEORGIA RAILWAY & POWER COMPANY, GEORGIA RAILWAY & ELECTRIC COMPANY.

J. D. Malsby, J. R. Hardin, F. McDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provabo, H. L. Gloer, F. D. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. W. Hawn, P. E. Davis and C. Roessler,

Plaintiffs in Error
and
Petitioners in Certiorari

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK,
Defendant in Error
and
Respondent in Certiorari

Number 464

MOTION TO ADVANCE.

Georgia Railway & Power Company, et al., plaintiffs in error and petitioners in certiorari, move that the above stated cases, (docketed as No. 464), be advanced for hearing at an early date, for the following reasons:

1. The above stated case is pending on writ of error and also on petition and application for certiorari, directed to the Supreme Court of the State of Georgia.

2. The questions involved in the said case are as follows:

(a) Whether the municipal action of the Mayor and Council of the City of College Park of November 6th, 1905, was a rate ordinance or a rate contract. If a rate ordinance, it is clearly and without dispute confiscatory and unconstitutional.

(b) Whether the said rate ordinance or contract is so discriminatory as to deprive the intervenors and all patrons of the street railway company, not boarding or alighting from cars within the limits of College Park, of the equal protection of the law guaranteed by the 14th amendment to the Constitution of the United States.

(c) If the action of the Mayor and Council of the City of College Park of November 6th, 1905, be held to be a rate contract; whether certain subsequent acts of the State of Georgia and orders of the Railroad Commission of Georgia enlarged, extended and imposed additional burdens upon the obligations of said contract and upon the obligations of prior contracts, so as to render the said acts and the orders of the commission unconstitutional and illegal in violation of Article 1 Section 10 of the Constitution of the United States.

(d) Whether the ordinance of November 6th, 1905, violated the 14th Amendment to the Constitution of the United States when construed by the State court as forcing the Georgia Railway & Power Company to continue to operate the College Park street car line when it is undisputed that to do so costs the company very much more than it receives from its fares, and is, therefore, confiscatory.

(e) Whether certain acts of the State of Georgia, construed by the highest court of Georgia, as placing under the jurisdiction of the Railroad Commission of Georgia, the authority to fix and establish rates in some cases and denying jurisdiction over rates in other cases, renders said acts unconstitutional, in that it deprived petitioners of the equal protection of the law and fixed a discriminatory, confiscatory

and illegal scheme of rates in violation of the 14th Amendment to the Constitution of the United States.

3. The matters herein involved are of great public interest; the constitutionality of several acts and of acts conferring jurisdiction over rates upon the Railroad Commission of the State of Georgia, as well as certain orders of the commission, are involved; and the determination of these questions are of pressing importance, not only to the public service corporation, but to the State itself.

4. The early decision of this case is exceedingly important to the Street Railway Company and to all its patrons (except such as enter and depart from cars in the limits of the City of College Park), for under the rate ordinance or contract in question and the orders of the Railroad Commission of the State of Georgia all the patrons riding upon any of the lines of the Georgia Railway & Power Company are charged a fare of 7 cents, except those boarding or alighting from cars within the corporate limits of College Park (and Decatur) and these latter pay a fare of only 5 cents for which they are entitled to demand and receive transfers entitling them to ride over all the street railway lines of the Georgia Railway & Power Company for a 5 cents fare, although all the other patrons are charged 7 cents.

It costs the Georgia Railway & Power Company more than double the fare of 5 cents to transport College Park patrons, and necessarily this over-cost is inflicted upon the Georgia Railway & Power Company or is borne by other patrons of the Street Railway Company. This palpable and gross discrimination is not only hurtful to the Georgia Railway & Power Company and its patrons, but is a constant source of annoyance to the public. The Railroad Commission of the State of Georgia has disapproved and expressly declared the College Park rate to be both discriminatory and confiscatory and regretted their inability to correct it and

urged correction thereof by the Mayor and Council of College Park.

The continuation of such discrimination "leads to consequences dangerous to public interest, peace and tranquility the extent of which it would be difficult in advance to perceive," (194 U. S. 517) and renders the determination of the questions raised in this case of pressing importance to the State, as well as to the public service corporations.

WALTER T. COLQUITT

J. PRINCE WEBSTER

LUTHER Z. ROSSER
Attorneys for Movants
Plaintiffs in Error
and
Petitioners in Certiorari

TO:

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK AND GEORGE P. WHITMAN, ITS COUNSEL:

You are hereby notified that on the 2nd day of January, 1923, or as soon thereafter as the same can be presented, the foregoing motion and application for the advancement of the above named case, will be presented to the Supreme Court of the United States for appropriate action thereon.

This 12th day of December, 1922.

WALTER T. COLQUITT

J. PRINCE WEBSTER

LUTHER Z. ROSSER
Attorneys for Movants
Plaintiffs in Error
and
Petitioners in Certiorari

Service of the above and foregoing motion and application

for advancement and of the notice of presenting the same is hereby acknowledged, service and receipt of copy of said motion and notice are hereby accepted and acknowledged.

GEORGE P. WHITMAN

J. L. REYNOLDS
Attorney for the Mayor and Council
of the City of College Park.

This 12th day of December, 1922.

Office Supreme Court, U. S.
FILED
APR 16 1923
WM. R. STANSBURY

Supreme Court Of The United States

October Term 1922

No. 464

GEORGIA RAILWAY AND POWER COMPANY, et al.,
Plaintiffs in Error and Petitioners in Certiorari,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, Defendant in Error and Respondent in Certiorari.

FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

Brief for Defendant in Error and Respondent in Certiorari.

GEO. P. WHITMAN,
Attorney for Defendant in Error and Respondent in Certiorari.

SUBJECT INDEX.

	Page
Statement of Case	1-17
The Pleadings	1-17
Petition and Amendments	1
Franchise Contracts	4
Answer and Cross-bill	6
Federal Contentions in Answer and Cross-bill	7
Prayers of Answer and Cross-bill	11
Amendment to Answer	12
Intervention	15
Demurrers and Motions to Strike	15
Verdict and Judgment	16
Assignments of Error	17
Brief	17-51
Writ of Error Should be Dismissed for Want of Jurisdiction	17
The Contract and Related Federal Questions	23
Consent Franchise a Contract in Form and Substance	25
Contract Valid, Subsisting and Binding Under Georgia Law	27
Mandamus Judgment Properly Adhered to	32
Georgia Decisions Upholding Contract Supported by Authorities of Other Jurisdictions	32
State has not Exercised Paramount Authority over Contract	34
Effect of Finding in Favor of Validity of Contract	36
Constitutionality of Act of 1907, and of its Proviso	36
Assignments of Error and the Record	38

Page

Federal Questions on First Appeal 40

Federal Questions Raised by Amendment to Answer 43

Federal Questions Raised by Amendment Without Merit 44

Contract Cannot be Surrendered and Operation Discontinued 47

Intervenors Took Case as They Found It 50

Petition for Writ of Certiorari Should be Denied 51

TABLE OF CASES

Page

Alleghany vs. Millvale, etc., Ry. Co., 159 Pa. 411, 28 Atl. 202 33

American Steel Foundries vs. Tri-City Council (U. S.) 66 L. ed. 103 35

Appleby vs. Buffalo, 221 U. S. 524, 55 L. ed. 838 38

Arkansas Natural Gas Co. vs. Arkansas Railroad Commission, United States Supreme Court, No. 500, October Term, 1922, decided March 19, 1923 ..... 34, 37

Atlanta vs. Standard Life Ins. Co., 149 Ga. 501 39

Bankers' Trust Co., vs. City of Raton, (U. S.) 66 L. ed. 409 27

Board of Education vs. Cosgrove, 11 Ohio Cir. ct. 163 32

Boerth vs. Detroit City Gas Co., 152 Mich. 654, 116 N. W. 628 33

Bonner vs. Gorman, 213 U. S. 86, 53 L. ed. 709 39

Charleston, etc., Lighting Co. vs. Charleston, (S. C.) 75 S. E. 390 33

Chicago, etc., R. Co. vs. Perry, (U. S.) 66 L. ed 635 37

City of Emporia vs. Emporia Telephone Co., 88 Kan. 443, 129 Pac. 187 33

Columbus R. etc. Co. vs. Columbus, 249 U. S. 399 27

Columbus vs. Public Utilities Commission, (Ohio Supreme Court) 133 N. E. 800 ..... 33, 41

Coms. of Road Imp. District vs. St. Louis, etc., R. Co. (U. S.) 66 L. ed. 230 24

Crescent Cotton Oil Co. vs. Mississippi, (U. S.) 66 L. ed. 55 37

Defiance Water Co. vs. City of Defiance, 191 U. S. 184, 194; 48 L. ed. 140, 144 17

Page

Detroit vs. Detroit Citizens' Street R. Co.
184 U. S. 368, 386 24

Duplex Printing Press Co. vs. Deering, 254 U. S.
443, 65 L. ed. 349 35

Durham Public Serv. Co. vs. Durham,
(U. S.) 67 L. ed. 330 37

Erie Railroad vs. Purdy, 185 U. S. 148, 46 L. ed. 847 39

Forman vs. New Orleans, etc., R. Co., 40 La. Ann.
446, 4 So. 246 51

Georgia Ry. & Power Co. vs. Railroad Commission
of Georgia, 149 Ga. 1.
..... 16, 18, 22, 26, 27, 31, 34, 36, 46, 51

Georgia Railway & Power Co. vs. Decatur,
152 Ga. 143, 108 S. E. 615
..... 17, 18, 19, 27, 31, 36, 49, 51

Georgia Railway & Power Co. vs. Decatur,
153 Ga. 329, 331 ..... 12, 17, 27, 51

Gillespie vs. Oklahoma, (U. S.) 66 L. ed. 211 51

Gunn vs. Atwell, 148 Ga. 137 39

Heisler vs. Thomas Colliery Co., (U. S.) 67 L. ed. 119 37

Howat vs. Kansas, (U. S.) 66 L. ed, 322, 324 20

Hulbert vs. Chicago, 202 U. S. 275, 50 L. ed. 1026 38

Knoxville Gas. Co. vs. Knoxville, 253 Fed. 217 27

Krueger vs. MacDougald, 148 Ga. 429 39

Kryser vs. Wilson, 242 U. S. 171, 61 L. ed. 229 46

Layton vs. Missouri, 187 U. S. 356, 47 L. ed. 214 43

Love vs. Goodson, 150 Ga. 46 51

Macon Ry. & Light Co., vs. Corbin, No. 3011,
Supreme Court of Ga., decided Feb. 28, 1923; re-
hearing denied March 3, 1923 ..... 26, 49

Macon R., etc., vs. Macon, 136 Ga. 797, (1-a) 26

Manitowoc vs. Manitowoc, etc., Traction Co.,
145 Wis. 13, 129 N. W. 925 33

Milwaukee Electric Co. vs. Railroad Commission,
238 U. S. 174, 59 L. ed. 1254 34

Page

Minneapolis, etc., R. C., vs. Menasha,
(Wis.) 150 N. W. 411 34

Minneapolis, etc. R. Co. vs. Washburn, etc. Co.
254 U. S. 370, 65 L. ed. 310 20

Muncie Natural Gas Co. vs. Muncie,
160 Ind. 97, 66 N. E. 436 33

McCoy vs. Union Elev. R. Co., 247 U. S.
354, 62 L. ed. 1157 46

National Subway Co. vs. St. Louis,
145 Mo. 551, 46 S. W. 981 32

Niagara Falls vs. Public Service Commission,
229 N. Y. 333, 128 N. E. 247 33

Nickel vs. Cole, 256 U. S. 222, 65 L. ed. 900 46

Northern Pacific R. Co. vs. Solum, 247 U. S. 477,
481; 62 L. ed. 1121, 1125 ..... 17, 20, 44

Oklahoma Natural Gas Co. vs. Oklahoma
(U. S.) 66 L. ed. 331 41

Paducah vs. Paducah R. C., (U. S.) 67 L. ed. 284 ..... 36, 51

Palmer vs. Phinizy, 151 Ga. 589 ..... 39, 40, 44

Patterson vs. Bank of Alapaha, 148 Ga. 356 39

Prudential Ins. Co. vs. Cheek, (U. S.) 66 L. ed. 626 37

Quinby vs. Public Service Commission, 223 N. Y.
244, 119 N. E. 433 33

Rio Grande Western R. Co. vs. Srtingham,
239 U. S. 44, 60 L. ed. 136 ..... 20, 21

San Antonio vs. San Antonio Pub. Serv. Co.,
255 U. S. 547, 65 L. ed. 777 36

Seattle, etc., R. Co. vs. Washington,
231 U. S. 568, 58 L. ed. 382 46

Shreveport Traction Co. vs. Shreveport,
(La.) 47 So. 40 33

Souffront vs. La Compagnie Des Sucreries,
217 U. S. 475, 487, 54 L. ed. 846, 851 32

Southern Iowa Electric Co. vs. Chariton,
255 U. S. 539, 65 L. ed. 764 36

Page

Southern Pacific Co. vs. Schuyler, 227 U. S. 601, 610; 57 L. ed. 662, 668 20

Southern R. Co. vs. Clift, (U. S.) 67 L. ed. 140 20

Springfield Gas & Electric Co. vs. City of Springfield, (U. S.) 66 L. ed. 38 ..... 34, 37, 42

Tampa Waterworks Co. vs. City of Tampa, 199 U. S. 241, 50 L. ed. 170 24

Texas vs. Brown, (U. S.) 66 L. ed. 428 36

Thornton, etc., Tool Co., vs. Duffy, 254 U. S. 361, 65 L. ed. 304 24

Union Dry Goods Co. vs. Georgia Public Serv. Corp., 142 Ga. 841 41

Wadley So. Ry. Co. vs. Georgia, 235 U. S. 651, 59 L. ed. 405 47

Wadley So. R. Co. vs. State, 137 Ga. 497 ..... 43, 47, 51

Ward vs. Krinsky, (U. S.) 66 L. ed. 616 24

Waters-Pierce Oil Co. vs. Texas, 212 U. S. 112, 53 L. ed. 431 20

Westinghouse Electric Co. vs. Binghampton R. Co., 225 Fed. 378 33

Wichita R., etc., Co. vs. Public Utilities Commission, (U. S.) 67 L. ed. 52 43

Yazoo, etc. R. Co. vs. Adams, 180 U. S. 1, 6, 7, 8; 45 L. ed. 395 ..... 20, 44

Zucht vs. King, (U. S.) 67 L. ed. 28 36

GEORGIA CODE SECTIONS:

	Page
2180 (1895)	25
2181 (1895)	25
2182 (1895)	25
2183 (1895)	25
2600	25
2625	47
2662	28
4336	32
6448	25, 30
6464	29

GEORGIA STATUTES:

Ga. Laws, 1906, p. 560	13, 47
Ga. Laws, 1907, p. 72	31
Ga. Laws, 1919, p. 94	35
Ga. Laws, 1921, p. 111	35

IN THE

SUPREME COURT OF THE UNITED STATES

GEORGIA RAILWAY & POWER COMPANY,
GEORGIA RAILWAY & ELECTRIC COMPANY,
J. D. Malsby, J. R. Hardin, F. McDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. D. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. W. Hawn, P. E. Davis and C. Roessler,
Plaintiffs in Error
and
Petitioners in Certiorari,
vs.
THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK,
Defendant in Error
and
Respondent in Certiorari.

No. 464, October Term 1922.

STATEMENT OF CASE.

The "Statement of Case" in brief of plaintiffs in error and petitioners in certiorari (hereinafter referred to as plaintiffs in error), is not, in our opinion, full enough properly to present the questions involved, and, for that reason, and because certain statements therein set forth are controverted, defendant in error and respondent in petition for certiorari (hereinafter referred to as defendant in error) makes the following statement of the case.

THE PLEADINGS.

Petition and Amendments: On October 18, 1920, The Mayor and Council of the City of College Park, a municipal corporation of Fulton County, Georgia, filed in the Su-

perior Court of that County, its equitable petition against the Georgia Railway & Power Company, and its alleged lessor, the Georgia Railway & Electric Company, alleging the grant by it, the petitioner, to the Electric Company, during the years 1902 and 1905, of certain pleaded franchise contracts; the 1905 contract stipulating, **inter alia,** that the grant was made, "provided: *** That no greater fare than that of five cents for each passenger be charged for passage from the southern limits of said City of College Park to some central point in the City of Atlanta"; that from the time of making the franchise contract of 1905, until 1912, when its property, lines and franchisees were leased by the Electric Company to the Power Company, the Electric Company charged a five cent fare to Atlanta from College Park, and from Atlanta to College Park, and that since 1912, the Power Company had done likewise; that the parties had, by their conduct, construed the franchise contract in question to relate to fares in both directions on the College Park line; and that there had never been a discontinuance of the charge of five cents for such service by either Company.

The petition further alleged that the franchise contract of 1905 had been held upheld as valid and binding, in a mandamus suit by the Power Company against the State Railroad Commission, to which petitioner was a party by representation, and that the judgment therein was res adjudicata. (A complete copy of the record in the mandamus case, including the judgment of the State Supreme Court therein, was pleaded by way of amendment to the petition. Record, pp. 58 to 128, and pp. 153 to 192).

It was further alleged that during the year 1906, and before the Electric Company had completed its double track construction under the franchise contract of 1905, it granted free transfers to passengers to and from College Park, to and from other transfer points on its lines; that the Power Company kept in force this free transfer privilege when it began the operation of the street railway system, and that there had been no discontinuance thereof; and that an application of the Power Company to the State Railroad Commission in April, 1919, for withdrawal of free

transfers from its College Park traffic, was upon hearing, denied.

It was also alleged that two regular sessions of the General Assembly of Georgia had been held since the judgment of the State Supreme Court in the mandamus case, without the enactment of any legislation nullifying the franchise contract of 1905, or the proviso of an Act of the General Assembly of Georgia of 1907, (hereinafter discussed), or giving the State Railroad Commission, or any other agency, the power to increase College Park fares; but had expressly refused to do so.

Certain orders of the Railroad Commission were pleaded by the petition, and also by an amendment thereto, as independent bases for certain relief prayed. (Record, pp. 55, 56, 150, 151, 152).

The petition further alleged that on or about October 5, 1920, the Electric Company and the Power Company served the authorities of petitioner with a pleaded notice, that from and after October 20, 1920, the fare to and from and between Atlanta and College Park on the line operated by the Power Company would be at the rate of seven cents; denying the validity or legality "of any so-called contract provision limiting the fare to five cents", set out in ordinance of November 6, 1905; and giving notice "that if the provision with reference to fare was binding at any time, it is not now binding or legal and is hereby terminated from and after the above named date."

Alleging that the franchise contracts were, and all the while had been, valid and binding contracts, and also that the Electric Company and Power Company were estopped from denying their validity; and denying that the Power Company was losing money on the College Park traffic, and averring that the service in and for College Park was inadequate, contrary to the orders of, and less adequate than required by, the Railroad Commission, and not worth more than five cents; it was charged that the threatened conduct on the part of the Companies, as set out in the notice, would constitute a breach of the contracts, a viola-

tion of the orders of the Railroad Commission, and also a violation of the laws of the state, and an unauthorized and illegal exercise of the sovereignty thereof. It was also alleged that certain Federal and State Constitutional rights of petitioner would be violated by the act threatened by the Companies in said notice.

The prayers of the petition, as amended, were that the Companies be restrained and enjoined from putting into effect their threatened conduct, as set forth in the notice; from increasing the fares from College Park to Atlanta, and **vice versa, until the same is allowed by the laws of this State;** from violating the franchise contracts, and each of them; from changing the status as to fares, transfers or service relative to petitioner, and the College Park line; that if not already so decreed, the franchise contracts be decreed to be valid, subsisting and binding contracts, and the Companies be required specifically to perform the same, and each and every part of each of said contracts; and that the Companies be restrained and enjoined from violating the rules, orders or regulations attached to the petition and an amendment thereto, and be required to perform and carry out the same.

(Record, pp. 44 to 51, 151).

The Pleaded Franchise Contracts: In 1901, the Mayor and Council of the City of College Park, upon the petition of certain individuals, granted them the right to lay a single track on a certain street of the City, and to operate an electric street railway over same, through the limits of the City, under stated conditions. (Record, pp. 44, 51, 52); this grant, in 1902, was transferred to the Atlanta Railway & Power Company (Record, pp. 44, 52), and thereafter, during the same year, transferred by that Company to the Georgia Railway & Electric Company (Record, pp. 44, 107, 108); which latter transfer was consented to by the Mayor and Council of the City of College Park, and the original grant and consent to construct, equip and operate a street and suburban railway along the roads and streets named in that grant, and the consent and permission therein contained, were regranted and reconsented

to the Georgia Railway & Electric Company, its successors and assigns. (Record, pp. 44, 53).

On November 6, 1905, the Mayor and Council of the City of College Park granted, in the form of an ordinance, to the Georgia Railway & Electric Company, its successors and assigns, the right, permission, consent and franchise to convert its then single track line of electric railway within the limits of the City of College Park into a double track line of electric railway; "and for this purpose to construct, electrically equip and operate such double track line of electric railway, and to make such changes in the existing structures as may be necessary to the equipment and operation of such double track line, and to do all other acts and things necessary and incident to the equipment, maintenance and operation of a system of double track electric railway in said City of College Park, **provided**:

"1st. That the course of said double track shall extend from the northerly limits of the City of College Park, along the street known as the chert road and along its continuation as a public road in Clayton County, to the southern limits of the City of College Park.

"2nd. That no greater fare than that of five cents for each passenger be charged for passage from the southern limits of said City of College Park to some central point in the City of Atlanta".

The ordinance also provided for the weight of rails to be laid; the location of the tracks on the road or street in question; and the manner of the conduct of the work in laying same. It was also provided that the life and duration of the franchise therein granted should be coincident with the franchise then owned by the Company in the City of College Park.

The second section of the ordinance provided: "That said Georgia Railway & Electric Company shall have fifteen days from this date within which **to accept** the foregoing franchise; and **if its acceptance within that time be signified in writing,** then said Georgia Railway & Electric Company, its successors and assigns, shall have twelve

months within which to equip and operate said line of double tracks; but if said double track line shall not be put in operation within twelve months from the date of **the acceptance in writing of the foregoing franchise,** then said franchise shall stand revoked."

Within fifteen days from the date of the ordinance, to-wit, on November 18, 1905, the Georgia Railway & Electric Company accepted in writing the ordinance and franchise granted by it, in the following language:

"Atlanta, Ga., November 18, 1905.

Honorable Mayor and Council of College Park,
College Park, Ga.

Dear Sirs:-

In accordance with the requirements of Section 2 of the ordinance adopted by your Honorable Body, November 6, 1905, providing for the construction of a double track railway line on the chert road through the City of College Park by this Company, the Georgia Railway & Electric Company hereby **accepts** said ordinance and the franchise granted by it by the said ordinance, and **agrees** to the terms and provisions of said ordinance, and **agrees** to construct, electrically equip and operate the double track line of electric railway as provided by said ordinance."

(Record, pp. 53, 54, 55).

Answer and (so-called) Cross-bill: On October 30, 1920, the Power Company and Electric Company filed to the petition what they termed an answer and cross-bill, the first twenty-six paragraphs of which more specifically constituted an answer to the allegations of the petition, either by way of admission or denial, or failure to make admission or denial, for want of sufficient information; and the remaining paragraphs, twenty-seven to fifty-five, by way of "further answer and cross-bill", alleging certain matters and objections, by way of defense to the relief sought by the petition, and perhaps, as basis for the alleged relief sought by the so-called cross-bill. Some of these matters or objections did not raise any constitutional questions, either State or Federal; others invoked certain pro-

visions of the State Constitution; while still others related to or were predicated upon both State and Federal constitutional provisions.

In view of the fact that it is contended that the Assignments of Error made for the purpose of bringing this case to this, the Federal Supreme Court, cannot be looked to for, or be made the basis of, a right of review here, unless supported by the record; and in view of the State practice relative to the decision of constitutional questions by the State Supreme Court (which matters are hereinafter discussed), it is deemed proper here to set forth substantially th contentions made by the answer and so-called cross-bill, insofar as they specifically relate to Federal constitutional questions, in order that any conflicts between such contentions, as pleaded, and said Assignments of Error, and also any contentions made alone by the Assignments of Error, may be made clearly to appear. Reference is omitted of general allegations of unconstitutionality, without designation of the particular State or Federal constitutional provision claimed to have been violated or invoked, for the reason that under the State practice, contentions in such form would not be considered, and for the further reason that, under the well-settled rule of the Federal Supreme Court, such contentions would be referred to State, rather than to Federal, constitutional provisions, even if considered at all. Likewise, objections made or contentions raised involving State constitutional questions, even though well pleaded, are here omitted, for the reason that such questions, under principles firmly established by the Federal Supreme Court, are matters of local concern, and will not be considered by that Court; subject, of course, to the limitation hereinafter discussed with respect to the power of that Court to inquire into and determine the question of the existence of a contract, and questions incident thereto, when certain Federal constitutional provisions are invoked.

Federal Contentions in Answer and (so-called) Cross-bill: (a) In paragraph fifty of the answer and so-called cross-bill, it is alleged that the Railroad Commission of the

State claims, and that it had assumed, jurisdiction over the Companies with reference to the fixing and regulation of service on the College Park line and traffic; that it had for some time regulated the number of cars and required additional service to that furnished at the time of entering into the five-cent fare provision; that at the time of entering into the contract provision, the service furnished was six cars per hour; that "under **the orders** of the Railroad Commission of Georgia and under its supervision the present service on said line amounts to twelve cars per hour. Defendants further say that in the Commission's order of September 22, 1920, the said Commission's order provides that defendants, as early as practicable and within 6 months from October 1, 1920, should operate trailers on its College Park route on each schedule now operating during the morning and afternoon rush hours as now established, to wit, during the hours of 6:30 to 9:00 (approximately) in the morning and 4:45 to 7:15 (approximately) in the afternoon. Defendants say that the Commission itself in its said order of September 22, 1920, states that to perform the present service on said College Park line under a 5 cent fare is not fairly compensatory. Defendants say that said action of the Commission in ordering defendants to increase their service, **if the Commission has power to make such order,** is an order by the State of Georgia and is an order, **which together with its other orders on said line,** makes the additional service rendered on said line confiscatory, and that **if the law** gives such power to the commission and **such orders** are valid, the said contract provision for a 5 cent fare **with said increased service** will amount to confiscation of defendants' property without compensation, without due process of law and would deprive the defendants of the equal protection of the law in contravention of the 14th amendment of the Constitution of the United States". (Record, pp. 142, 143). The order of the Railroad Commission, above referred to, is set out by way of exhibit, to the answer and so-called cross-bill, and so far as is here material, is as follows: **"That as early as practicable, and if the necessary equip-**

ment can be secured, within six months from October 1st, 1920", trailers should be operated on the College Park route during the morning and afternoon rush hours.

(b) In paragraph fifty-one, it is alleged that under the 14th amendment of the Federal Constitution, the Railroad Commission of the State cannot have authority to order **changes or additions to defendants' service,** while it has no power or authority to increase the fare to a point where it will pay for the **additions and changes in service** and provide a reasonable return upon the value of the property used in performing **said service;** that on February 5, 1917, petitioner formally requested the Commission to regulate service on the College Park line; that "it (if) petitioner undertook to get the benefits of the jurisdiction of the Railroad Commission with reference to the regulation of service, which jurisdiction it asserts, it would be **the action of petitioner** which would cause a confiscation of defendants' property in violation and in contravention of the *** 14th amendment of the Constitution of the United States." (Record, pp. 143, 144). The request above mentioned merely asked for an investigation of traffic conditions, and a remedy for same **in such way and manner as might seem just and right, both to the Company and to the public.** (Record, pp. 149, 150.)

(c) In paragraph fifty-two, it is alleged that if the Act of 1907, pages 73, et seq., is given the construction that under it, the Railroad Commission can require the defendants to make changes and additions to the College Park service, without having the power to increase rates of fare with reference to such service, the Act is now confiscatory, unconstitutional and void; that complying with the orders of the Commission with reference to service, the expense thereof per passenger with respect to College Park traffic is at least 13.957 cents; and that under the present state of facts, "any legislative act which deprives the Commission of the power to increase the rate of fare but grants it the power to increase service to such an extent that such increased service will require an income in excess of that produced by any rate of fares protected by said act would make the said act of the legislature confiscatory,

illegal and void and in contravention of *** the 14th amendment of the Constitution of the United States; *** and defendants say that **either** said act of 1907 is void for the reason aforesaid, OR the exception to said act providing 'nothing herein shall be construed to impair any valid, subsisting contract now in existence between any municipality and any such company, and provided this act shall not operate as a repeal of any existing municipal ordinance', is illegal, void and unconstitutional for the reasons just stated, and **defendants attack said exception."** (Record, pp. 144, 145).

(d) In paragraph fifty-three, it is alleged that if the contract provision relative to fares is held to come within the exception of the "act of 1907, page 73 et seq.", just above quoted, then the exception of the act is invalid and unconstitutional for the reason that it does not provide for a legal classification, and consequently, contravenes the 14th amendment to the Constitution of the United States, insuring to parties due process of the law and the equal protection of the law. (Record, pp. 145, 146). **It should here be noted** that this attack upon the exception above quoted, to the Act of 1907, makes no reference whatever to the amendatory Act of August 18, 1919 (Georgia Laws, 1919, page 94), referred to in the Third Assignment of Error of plaintiffs in error, and sub-paragraph (a) thereof. (Record, pp. 6, 7). Furthermore, the Act of 1919 is not mentioned or referred to in any of the assignments of error contained in the bill of exceptions or writ of error from the trial court to the State Supreme Court in this case. (See particularly, Record, pp. 35, 36).

(e) In paragraph fifty-four, it is alleged as follows: "Defendants say that constitutionally they cannot be required to operate their said property under and by virtue of any so-called contract provision within the limits of College Park at a loss and it is impossible to continue to operate it at 5 cents save at a continuing loss and defendants say that under the constitution *** of the United States as contained in section 6700 of the Georgia Code (14th amendment), defendants would be deprived of their

property without due process of law, if they should be required to operate their cars within the corporate limits of College Park under the so-called franchise contract". (Record, p. 147).

Prayers of Answer and (so-called) Cross-bill: In paragraph fifty-four of the answer and so-called cross-bill, the following language appears: "If it be held by the court that defendants cannot terminate said contract provision, without at the same time giving up the right to operate its cars within the municipal limits of College Park and giving up any right they may have under the other provisions of said so-called franchise contract, defendants say that they hereby surrender all rights they may have under and by virtue of said so-called contract franchise and ask the court to declare all their rights under and by virtue of said contract null and void and to relieve the defendants of operating said line within the limits of College Park and to permit defendants to take up their said tracks within the corporate limits of College Park. *** If the court should hold that said so-called contract provision limiting the fare to 5 cents must be performed and is binding unless defendants abrogate the entire so-called franchise contract and terminate the entire contract, defendants hereby offer to surrender the entire contract and cease to operate cars in or within petitioner's territorial limits." (Record, p. 147).

Attention is called to the fact that this language is not only inconsistent with that of the last paragraph (fifty-five) of said answer and so-called cross-bill (Record, p. 147), but is also contained in that part of the pleading, which would be somewhat akin or analogous to the stating or charging part of a bill, if, indeed, the pleading is anything more than defensive in its nature, which, it is contended, is not the case. There is nothing whatever in the prayers of said answer and so-called cross-bill, relating to or embracing the conditional suggestions covered by the language in question. The defendants prayed merely that the "so-called contract provision" be declared unenforceable as a valid and binding contract between the parties;

that it be declared illegal, void and unconstitutional, and terminated and of no force and effect; that the plaintiffs and **all other parties** be restrained and enjoined from in any way or manner enforcing or undertaking to enforce said provision, and from interfering **with defendants fixing and establishing** reasonable, just and non-discriminatory fares or rates of fare with respect to the College Park traffic, and from in any manner or in any way interfering **with defendants enforcing and collecting** such reasonable, just and non-discriminatory fares **as are fixed by defendants.**

Amendment to Answer: On November 3, 1921, the Power Company and Electric Company filed an amendment to **their answer,** which was verified by an officer of each Company; the verification stating that the **new facts of defense** set out in the **amendment to the answer,** were not omitted for the purpose of delay, and that the amendment was not offered for delay. (Record, pp. 200, 201).

By this amendment, the same questions of law which were raised by the original answer and so-called cross-bill- are reiterated, reclothed and elaborated. (Georgia Railway & Power Co. vs. Decatur, 153 Ga. 329, 331). Certain contentions made in the originaal answer relative to the existence of a valid contract, depending upon the questions of power to contract, right of abrogation, and the nature of the contract, and also the effect of certain provisions of the State Constitution upon these questions, were repeated in the amendment. (Record, pp. 195, 199, 200). By the amendment, it was claimed that the contract in question violated that provision of the State Constitution, **inter alia,** contained in Section 6389, of the State Code; which, though not specifically mentioned in the original answer, had been thoroughly considered, upon presentation and argument, by the State Supreme Court, in a decision in the same case, previous to the decision or judgment from which the present writ of error has been sued out. (Georgia Railway & Power Co. vs. Decatur, 153 Ga. 329, 331).

In the original answer it was contended by the defend-

ants that the so-called contract provision as to fares did not undertake to fix fares from Atlanta to College Park, or from any point in College Park, other than from the "southern limits" thereof, to Atlanta; and it was also contended that said fare provision did not apply to seven hundred and eighty feet of territory which had been added to the City of College Park by extension of its northern limits after the date of the execution of the contract. (Record, pp. 136, 137). In the amendment it was alleged that the extension of the limits of College Park was by Act of the Legislature of August 20, 1906, (Ga. Laws 1906, p. 650 et seq.); that this added territory had already been occupied by the defendants' tracks under grants from Fulton County, accepted by the Companies, or their predecessor, under state statutes providing that no street or suburban railway can lay its tracks in the public roads of any county without the consent of the proper authorities of the county; which grants contained no fare provision; and it was further alleged that in 1919, the Railroad Commission had permitted the defendants to charge a fare of six cents over all lines, except that part of the College Park line covered by the College Park contract; and later, by another order, a fare of seven cents, with the same exception. Therefore, it was alleged that **if the courts hold that the effect of the extension Act was to extend,** by virtue of the contract with College Park, the five-cent fare over the added territory, that Act, to wit, the Act of 1906, would impair the College Park contract, in violation of the contract clause of the Federal Constitution, because, under the contract, the defendants were to charge only five cents "from the southern limits of said City of College Park to some central point in the city of Atlanta", and it would be an extension and violation of the contract to extend the five-cents fare from and to the added territory not then a part of College Park. It was also alleged that **if said Act of 1906 shall be construed** to add the territory thereby annexed to College Park, to the five-cents area provided for in the College Park contract, then said Act of 1906 would impair the obligations of the contracts with Fulton County,

in violation of the contract clause of the Federal Constitution. (Record, pp. 196, 197, 198).

The question of the territorial operation of the fare provision of the College Park contract is, in like manner, again made by the amendment, by the suggestion that **if the courts shall so construe** the exception or proviso clause of the Act of 1907, or the orders of the Railroad Commission, fixing six and seven cent fares, as excepting all points from Atlanta to all points in College Park, and all points in College Park, other than its southern limits, to some central point in the City of Atlanta, such Act and orders, will impair the College Park contract, in violation of the contract clause of the Federal Constitution.

The amendment further alleges that **if the court construes** the Act of 1907 so as to give the Railroad Commission power to increase quality and quantity of service over that in force at the time the contract was made, then the contract would be impaired, in violation of the contract clause of the Constitution of the United States; and **if the court does not so construe the Act of 1907,** then orders of the Commission, since that Act, increasing the quality and quantity of service in, to and from College Park, being the acts of the State, by increasing the cost of service, so impair such contract.

In the original answer it was admitted (paragraph ten) that when the Power Company took charge of the Electric Company's system of street railway, and began to operate same, it kept in force the free transfer privilege to and from College Park, as had been afforded by the Electric Company, and that there had been no discontinuance of same (Record, pp. 45, 130), but the Companies denied the authority of the Railroad Commission to require the issuance of transfers to the College Park traffic, and claimed that **they themselves** had the right, power and authority to discontinue same; and they further alleged that the contentions made in the answer and so-called cross-bill "with reference to illegal, discriminatory and unconstitutional rates with reference to College Park traffic also apply with reference to transfers demanded by and issued

to such passengers". (Record, pp. 130, 131). In the amendment to the answer, it is alleged that an order of the Railroad Commission declining the request of the Companies for permission to discontinue the practice of giving transfers, impaired the College Park contract, **if the court holds the contract valid.** (Record, p. 199).

The amendment to the answer was purely defensive; expressly so limited in its verification; and contained no prayers whatever for any relief, even if otherwise justified (which is denied), on account of the matters set forth therein.

The Intervention: On November 20, 1920, certain individuals intervened in the case, filing what was claimed to be an answer and cross-bill therein, "praying, **inter alia,** in said answer and cross-bill, that the so-called contract provisions with reference to College Park traffic be declared to be illegal, unconstitutional and void, and that the same be cancelled". (Record, p. 24). While the Praecipe in this case specifies the Bill of Exceptions and Record from the Superior Court of Fulton County (trial court) to the Supreme Court of Georgia (Record, p. 13); and the Record referred to includes the answer and cross-bill of the individual intervenors (Record, p. 42), such answer and cross-bill seems to be omitted from the printed Transcript of Record in this Court.

Demurrers and Motions to Srike: Prior to the interlocutory hearing, hereinafter referred to, demurrers were interposed to the original answer and so-called cross-bill, and also to the intervention above mentioned. Under the State practice these demurrers were not formally passed upon in that hearing. The amendment to the answer of the defendants was filed after that hearing and after the judgment therein had been affirmed by the State Supreme Court. After the affirmance of that judgment, additional demurrer and motion to strike was interposed to the original answer and so-called cross-bill, and to the amendment to the answer, and to the original answer and so-called cross-bill, as amended by said amendment. All de-

murrers were sustained on January 18, 1922, with the result that the intervention was stricken; and the original answer and so-called cross-bill and the amendment to the answer, were, likewise, stricken, except insofar as the answer either specifically admitted or denied the allegations of the petition, or neither admitted nor denied the allegations thereof for want of sufficient information. (Record, pp. 192, 201, 204, 25). The demurrer to the intervention, though covered by the Praecipe, and the bill of exceptions from the trial court (Record, p. 42), does not appear in the printed Transcript of Record in this Court.

The grounds of demurrer and motion to strike were general in their nature; one of the grounds of demurrer, **inter alia,** being that the matters and things alleged as grounds of defense, or for relief, were concluded by the decision, ruling and judgment of the State Supreme Court and of the trial court in the case of Georgia Railway & Power Company vs. Railroad Commission of Georgia, 149 Ga. 1. (Record, pp. 202, 203).

Verdict and Judgment: The case made by the petition having been proved as laid (Record, pp. 26 to 32), and the defendants having offered no evidence whatever, notwithstanding their answer was still in to the extent above mentioned, the trial court directed a verdict in favor of the petitioner, and thereupon a decree or judgment was rendered granting to the petitioner the relief prayed by it. (Record, pp. 34, 204, 205). This judgment or decree was excepted to, as were the rulings of the trial court on the demurrers and motion to strike, and on certain requests to charge made by the defendants on the trial, in writ of error to the State Supreme Court (Record, pp. 24 to 44), with the result that the judgment of the court below was affirmed by the Supreme Court of the State. (Record, pp. 18, 23). It is to this judgment that the present writ of error was sued out, and with respect to which petition for writ of certiorari has been presented.

ASSIGNMENTS OF ERROR

The Assignments of Error, considered in the light of the constitutional questions raised by the pleadings, or by the record, and passed upon by the State Supreme Court, if so passed upon in the judgment now under review, are, in part at least, subject too be either disregarded or modified, as hereinafter contended and set forth.

BRIEF.

THE WRIT OF ERROR SHOULD BE DISMISSED FOR WANT OF JURISDICTION TO ENTERTAIN IT.

The fundamental question of jurisdiction of the Federal Supreme Court presents itself on every writ of error, and must be answered by the Court, whether propounded by counsel or not.

Defiance Water Co. vs. City of Defiance, 191 U. S. 184, 194; 48 L. ed. 140, 144;

Northern Pacific R. Co. vs. Solum, 247 U. S. 477, 481; 62 L. ed. 1121, 1125.

The case at bar has been before the State Supreme Court twice. The first writ of error from the trial court was from the grant of an interlocutory injunction against the plaintiffs in error, both below and here, and a decision by the State Supreme Court was rendered thereon, affirming the judgment below, on September 27, 1921. (152 Ga. 143, 108 S. E. 615; Record, pp. 18, 22). The second writ of error from the trial court was, as above indicated, from judgment or decree, of date, January 18, 1922 (Record, pp. 34, 204), which judgment was affirmed by the State Supreme Court on April 29, 1922. (Record, p. 23, and see p. 18; also 153 Ga. 329). This latter judgment, to which the present writ of error was sued out, is predicted upon non-Federal grounds, to wit, the doctrines of **res adjudicata** and "law of the case". The State Supreme Court held: (1) A judgment of a trial court granting or refusing an injunction where the same depends upon a question of law, is, upon its affirmance by the Supreme Court, a **final** adjudication of such question; (2) The rulings of the

Supreme Court, upon interlocutory order of the trial judge granting an injunction, become the **law of the case** as to the particular case; and (3) An affirmance by the Supreme Court of the order of the lower court granting a temporary injunction is a ruling upon all questions of law involved, though the legal contentions may not have been specifically enumerated or mentioned in the opinion of the Court; and applying these rulings or holdings **alone,** affirmed the judgment of the Court below. In the opinion, the Court said: "The present case comes up upon the final hearing in the court below. The exceptions are to the rulings sustaining the general demurrers, the declination of certain requests to charge, and the direction of a verdict in favor of a permanent injunction, and the final decree thereon. The case thus comes before the court the **second time** for review. The first appeal was from the interlocutory order of the trial judge granting a temporary injunction against the plaintiffs in error. A decision therein was rendered September 27, 1921. 152 Ga. 143 (108 S. E. 615). Upon the hearing of the first appeal the court held that the decision of the court in the mandamus case, Georgia Ry., etc. Co. vs. Railroad Commission of Georgia, 149 Ga. 1, was controlling upon the questions then under consideration, and a request for a review of the mandamus case was refused by this court; and, immediately following the refusal to review the mandamus case, the court held: 'And the court is further of the opinion, that, **independently** of this ruling as to the case we are asked to review, **the Georgia Railway & Power Company was without authority to fix the rate** which the plaintiffs in the court below sought to enjoin; and consequently the court did not err in granting the interlocutory injunction'. The effect of this ruling was, that not only **the law in the mandamus case was con-controlling,** but that **independently,** under the questions of law presented in the appeal then under review, the ruling of the trial judge was without error. While the plaintiffs in error now insist that some ten distinct points of attack upon the validity of the contract are made in the present ap- that were not made in the mandamus case (149 Ga. 1), **it is**

not and cannot be **insisted** that the identical questions of law were not involved upon the first hearing ofo the interlocutory injunction ** as are now involved upon this second appeal. *** Upon a careful inspection of the entire record, we are unable to find a question of law or fact that was not involved in the former hearing upon the interlocutory order granting the injunction, or in the mandamus case. The same questions of law are reiterated by amendment, reclothed and elaborated; but it is not difficult, upon a careful inspection, to find that we have met them before. ** the last ruling ** is clearly **res adjudicata,** in our opinion, of the present case. *** The rulings of the court upon an interlocutory grant of injunction become the 'law of the case' upon the final hearing.***when this court reaffirmed the ruling in the mandamus case and held that, **independently** of the mandamus order, the trial court did not err in granting the interlocutory order, it was an adjudication of every attack upon the validity of the contract in question, even though the numerous objections may not have been specifically ruled upon in the opinion of the court. ** In the light of the rulings above stated, we are convinced that this case has had its day in court. ** the ruling in the 152 Ga. 143 (108 S. E. 615) is not only **res adjudicata of every issue involved in the present hearing,** but is the 'law of the case' in the case now under review."

It will thus be seen that the State Supreme Court, in its opinion and judgment—the judgment from which the present writ of error was sued out—rests upon an independent ground not involving a Federal question and broad enough to sustain the judgment. It is predicated not only upon the doctrine of the 'law of the case,' but also upon the doctrine of **res adjudicata,**— a doctrine well established by prior decisions of the State Supreme Court. The interlocutory judgment, upon its affirmance by the State Supreme Court, was a **final** adjudication, and was not merely advisory, **but absolutely binding,** both upon the trial court, and upon the Supreme Court on second appeal. The instant case is not the only case ever decided by the State Supreme Court, making the judgment of the appellate court upon an interlocutory injunction final. It merely

follows a long line of its own decisions to that effect. These decisions are cited in the opinion. These cases are of long standing. They leave no room for doubt. Nor is the doctrine peculiar to Georgia. Its existence elsewhere has been recognized by this court, and effect given to it on the identical jurisdictional question here involved.

Northern Pacific R. Co. vs. Ellis, 144 U. S. 458, 464; 36 L. ed. 504, 506;

Yazoo, etc., R. Co. vs. Adams, 180 U. S. 1, 6, 7, 8; 45 L. ed. 395;

See also Rio Grande Western R. C. vs. Stringham, 239 U. S. 44, 60 L. ed. 136.

The recent case of Southern R. Co. vs. Clift, (U. S.) 67 L. ed. 140, does not determine this one. In that case the doctrine of the 'law of the case' merely, was involved, and the constitutional question presented in that case was considered and decided. That case was not constrained by the law of the state; whereas, such constraint does exist in the present case. In that case, the prior ruling directed the **discretion** of the court in its subsequent judgment; in the present case, the prior ruling was **res adjudicata,** superseded discretion and compelled judgment, in submission to its final and binding effect.

Where the State Supreme Court decides and disposes of a case on general law, or on a non-Federal ground, sufficient to sustain the judgment, the Federal Supreme Court will not consider Federal questions mooted and assigned for error, but will dismiss the writ of error, or affirm the judgment, according to circumstances.

Waters-Pierce Co. vs. Texas, 212 U. S. 112, 53 L. ed. 431;

Southern P. Co. vs. Schuyler, 227 U. S. 601, 610; 57 L. ed. 662, 668;

Minneapolis, etc., R. Co. vs. Washburn, etc., Co., 254 U. S. 370; 65 L. ed. 310;

Howat vs. Kansas, (U. S.) 66 L. ed. 322, 324, **and cases cited.**

The interlocutory judgment, upon its affirmance, being

a **final** adjudication, as above indicated, and the Federal questions relied upon to confer jurisdiction upon this Court being involved only in that decision, if at all, and that judgment not having been complained of to this Court by writ of error, or otherwise, (of which this Court will take judicial notice), the present writ of error, to the judgment on the second writ of error from the trial court to the State Supreme Court, will be dismissed.

Rio Grande Western R. Co. vs. Stringham, 239 U. S. 44, 60 L. ed. 136.

If it were legally possible to read into the judgment of the State Supreme Court upon the second writ of error, the decisions or holdings of that Court upon the first writ of error (which, of course, cannot be done except by way of assumption, for sake of argument), the judgment would still have basis in a non-Federal ground sufficient to sustain it, and, therefore, under the authorities above cited, the writ of error would be dismissed.

In 1918 the Power Company, lessee of the Electric Company, petitioned the Railroad Commission to grant an increase of fare over the College Park line. This application was rejected by the Railroad Commission, which held that it was without jurisdiction to grant the increase of fare, under the proviso of the act of August 23, 1907, which prohibited them from interfering with existing rates where there was a valid, subsisting contract. On August 23, 1918, the Power Company sought a mandamus to compel the Railroad Commission to take jurisdiction and to act upon the application for an increased rate over the electric line in question. This application was based upon an attack on the validity of the contract between the City of College Park and the Electric Company. The State Supreme Court upheld the judgment of the lower court denying the mandamus absolute, thus adjudging that the Railroad Commission was without jurisdiction because of a valid, subsisting contract between the parties. (Record, pp. 14, 15).

The State Supreme Court, in its judgment affirming the interlocutory injunction in the present case, held that the

mandamus judgment above referred to, controlled adversely to the plaintiffs in error the issues presented for decision; but that, **independently** of the ruling made in the mandamus case, the Power Company was without authority to fix the rate which the plaintiffs in the court below sought to have enjoined, and that consequently the lower court did not err in granting the interlocutory injunction. In its opinion, the Court said: "Under our law the rate of fare upon this and every electric railway company within the State must be fixed **by the Railroad Commission, unless** there is a valid, subsisting contract made prior to the act of August 23, 1907. ** If there existed, on August 23, 1907, a valid, subsisting contract which fixed the rate, it was conclusive, and neither the Railroad Commission nor either of the parties to the contract can change or alter it. If there was a void contract for any of the numerous reasons urged by plaintiffs in error, then it was not a valid, subsisting contract and **the Railroad Commission only** could and should fix a change in the rate. In the instant case the Power Company is assuming to do what the Railroad Commission refused to do, and what this Court has held they were right in not doing, to wit, declare the contract ** void. *** If this is a void contract, **the Railroad Commission alone** has the right to change the fare. ** Plaintiffs in error are met at the very threshold with the question of their right to declare void this contract of 1903; but, should we grant to them the right to do so, they are met with what appears to be an unanswerable objection, that the Power Company has no right to alter, change, or fix a rate differing from the existing rate under which it has been operating their line of railroad since 1903. *** Whatever conclusion might be reached as to the validiy of the contract, ** it would not affect the conclusion that the **Power Company is without authority** to change or fix rates on its electric lines, and this is exactly what it attempts to do, and what the trial court has enjoined it from doing in the instant case.

"But the ruling of this court in the case of Georgia Railway & Power Co. vs. Railroad Commission, 149 Ga. 1, (98

S. E. 696, 5 A. L. R. 1), if unreversed, is **conclusive** on the issue involved in the instant case, *** the court is further of the opinion, that, **independently** of this ruling, ** the Georgia Railway & Power Company was without authority to fix the rate which the plaintiffs in the court below sought to enjoin."

(Record, pp. 15, 16, 17; 152 Ga. 143, 145, 146, 147, 148).

Thus, it will be seen, the judgment of the State Supreme Court, affirming the interlocutory injunction in the instant case, rests squarely upon the **conclusiveness** of the mandamus judgment; and upon the want of power on the part of the plaintiffs in error, **under the State Constitution and statutes,** to change or fix a rate different from the existing rate on the College Park line, as it threatened to do, even though the contract relative thereto were void. Both of these grounds appear to be non-Federal in their nature. Certainly, the latter is of such character.

THE CONTRACT AND RELATED FEDERAL QUESTIONS.

The Federal questions, if timely and properly raised, fall into two groups: Both the due process clause and the equal protection of the laws clause of the 14th amendment, and the contract impairment clause, of the Federal Constitution.

On the one hand, the plaintiffs in error contend, in the main, that what they term the "so-called contract provision" relative to fares on the College Park line, is not a contract; that it is impossible to continue to operate **within the limits of College Park** under such provision save at a continuing loss, and if they should be required to do so, they would be deprived of their property without due process of law, contrary to the 14th amendment. (Record, p. 147; Brief, pp. 10, 11).

On the other hand, the plaintiffs in error contend that the provision is a contract, and if certain acts and orders are construed in certain ways, they would impair its obligations, in contravention of the contract impairment clause of the Federal Constitution.

It is, of course, recognized that when the contract clause of the Federal Constitution is timely and properly invoked, and the Federal Supreme Court has jurisdiction, it will determine, for itself, the question of the existence of a contract, and if found to exist, what obligation arose from it, and whether that obligation has been impaired by subsequent legislation. It is also recognized that where the 14th amendment is likewise invoked, and this court has jurisdiction, it will determine the question of the right of property, the deprivation of which is claimed, and that incident to the determination of this question, it may be necessary to determine, negatively, the existence of a contract. However, in the present case, it would seem to be entirely unnecessary, so far as the contract clause of the Constitution is concerned, to have to determine the prmiary question of the existence of a contract, for defendant in error claims it exists, and plaintiffs in error must take the same claim to invoke the contract clause.

But even in the determination of the question of the existence or non-existence of a contract, which this Court decides for itself, the question is whether there is a contract **under state law.**

Comrs. of Road Imp. District vs. St. Louis, etc., R. Co., (U. S.) 66 L. ed. 230, 234.

And this Court will give "very great respect and weight" to the decisions of the Supreme Court of Georgia on the question (Detroit vs. Detroit Citizens' Street R. Co., 184 U. S. 368, 386); and will lean toward an agreement of view with the State court if the question seems balanced with doubt.

Tampa Waterworks Co. vs. City of Tampa, 199 U. S. 241, 50 L. ed. 170.

And this Court will accept on writ of error the decision of the highest State court as to the meaning of state legislation and the State Constitution, as though such meaning was expressed in both legislation and Constitution.

Thornton, etc., Tool Co. vs. Duffy, 254 U. S. 361, 65 L. ed. 304;

Ward vs. Krinsky, (U. S.) 66 L. ed. 616.

THE CONSENT FRANCHISE WAS AND IS A CONTRACT BOTH IN FORM AND SUBSTANCE.

In January, 1902, and prior to the transfer, regrant and reconsent to it of the first franchise contract, and prior to the second franchise contract of 1905 (Brief, pp. 5, 6), the Georgia Railway & Electric Company, pursuant to an Act of the General Assembly of Georgia, approved December 17, 1892, and acts amendatory thereof, had been chartered as a corporation by the State of Georgia, for the purpose of owning, constructing, maintaining and operating a street and suburban railroad within the limits of the City of Atlanta, Georgia, and to and from said City to divers points within the County of Fulton, and elsewhere, "subject to the provisions of article four (4) of the Constitution of this State, and all the laws governing railroad companies of force at the date of this certificate, or that may hereafter become of force, either by constitutional or statute law, or by any rules and regulations of the railroad commission of this State, or otherwise, which govern and control the operation of railroads in this State". The charter applied for was for the term of one hundred years. Three amendments, on petition of the corporation, were made to its charter during the years 1902 and 1903; the last of said amendments expressly conferring certain powers and privileges set out in certain provisions of the Code of Georgia of 1895, therein mentioned. (Code of Georgia, 1895, Vol. II, Sections 2180, 2181, 2182 and 2183). (Record, pp. 100, 101, 102, 103).

The present Constitution of the State of Georgia, adopted in 1877, provides (Par. 20, Sec. 7, Art. 3; Park's Ann. Code, 1914, Vol. 5, Sec. 6448): "The General Assembly shall not authorize the construction of any street passenger railway within the limits of any incorporated town or city, **without the consent of the corporate authorities."**

Section 2180 of the Code of Georgia of 1895 (now Section 2600 of Vol. 2, Park's Ann. Code), above referred to, provides, **inter alia,** for the incorporation of suburban and street railroad companies: **"Provided,** that no street-rail-

road incorporated under this Division shall be constructed within the limits of any incorporated town or city without the consent of the corporate authorities: **And provided further,** that all such street-railroad companies incorporated under this Division shall be subject to all just and reasonable rules and regulations by the corporate authorities and liable for all assessments and other lawful burdens that may be imposed upon them from time to time."

Accordingly, under the charter of the Electric Company, and under the Constitution and under the statute law of the State, it was necessary that the Company secure the **consent** of the municipal corporate authorities of College Park before it could occupy the streets of the municipality and operate its line or lines of electric railway in and over same.

The 1901 franchise was the grant, by resolution, of a petition of certain individuals, subject to certain conditions. The 1905 franchise and consent was granted, admittedly upon petition of the Electric Company (Record, p. 32), with certain provisos, and, among others, the maximum rate provision in question. While in the form of an ordinance, the acceptance, in writing, on the part of the Electric Company, was required thereby to be made within a limited time; and was so made in the usual language of contract or agreement. There was a grant, on the one hand, of certain rights which could not be had otherwise than by consent or grant; provided the grantee, on the other hand, should do certain things; the grant required the agreement or acceptance in writing on the part of the grantee before the grant should become operative; and the grantee's acceptance, its agreement, its promises, were made in the form and within the time required. (Brief, pp. 5, 6).

An accepted ordinance constitutes a contract.

Macon R., etc. Co. vs. Macon, 136 Ga. 797, (1-a);

Georgia Railway & Power Co. vs. Railroad Commission of Georgia, 149 Ga. 1 (involving identical contract now in question);

Macon Railway & Light Co. vs. Corbin, No. 3011, Supreme Court of Georgia, decided February 28, 1923; re-

hearing denied March 3, 1923 (not yet reported; hereinafter referred to);

Knoxville Gas Co. vs. Knoxville, 253 Fed. 217;

Columbus R., etc. Co. vs. Columbus, 249 U. S. 399;

Bankers Trust Co. vs. City of Raton, (U. S.) 66 L. ed. 409.

THE CONTRACT IS A VALID, SUBSISTING AND BINDING CONTRACT UNDER GEORGIA LAW.

The contract in question has been before the Supreme Court of Georgia, the highest court of the state, three times; and its validity, first established by judicial decision in the mandamus case (Georgia Railway & Power Co. vs. Railroad Commission of Georgia, 149 Ga. 1), has not been denied by the later decisions, but expressly reaffirmed therein. (Georgia Railway & Power Co. vs. Decatur, 152 Ga. 143, 153 Ga. 329; Record, pp. 13 to 23).

The validity of the contract in question was thoroughly considered, upon its attack from many angles, and upheld in the mandamus case. From an inspection of the petition of the Georgia Railway & Power Company in that case, which is a part of the record here (the record in that case having been introduced in evidence by the plaintiff in the trial court in the present case, in support of that portion of its petition wherein the judgment in the mandamus case was relied upon as **res adjudicata** and conclusive) it will be seen (Record, pp. 58 to 71, and particularly latter page) that the question of power to make the contract was raised, both under the charter of the municipality and the Constitution of the State, and the proviso of the Act of 1907 was also attacked on Constitutional grounds.

Again, when the present case went to the State Supreme Court from the grant of the interlocutory injunction, the mandamus case, was upon request, reviewed, and upon review, adhered to. The record before the Court on that hearing contained the original answer and so-called cross-bill of plaintiffs in error, with all the contentions with respect to the contract therein contained (Record, p. 15; 152 Ga. 145).

In the mandamus case it was held that, applying the principle that "a grant of power to a municipal corporation must be strictly construed; and such a corporation can exercise no powers except those which are expressly given, or are necessarily implied from express grants of other powers", a municipality without such express or necessarily implied power, could not pass **a mere regulatory ordinance** fixing rates of fare upon the lines of a street railway constructed within its limits; but it was held that a municipality could **contract** with reference to fares under the circumstances and subject to the limitations therein stated.

In that case, the Court said: "We will first consider the question as to whether, if there were contracts in existence on the 23rd day of August, 1907, between the municipalities named, or any of them, by the terms of which the street-railroad fares were fixed as to that municipality, such a contract would prevent the fixing of the street-railroad fares by the commission. The act to revise and enlarge the powers and duties of the Railroad Commission of Georgia, etc., approved August 23, 1907, contains the statutory provision now embraced in Section 2662 of the Civil Code, and, so far as relates to the questions under consideration in this case, reads as follows: 'The powers and duties hereinbefore conferred by law upon the railroad commission are hereby extended and enlarged, so that its authority and control shall extend to street-railroads and street-railroad corporations, companies, or persons owning, leasing or operating street-railroads in this State: **Provided, however, that nothing herein shall be construed to impair any valid subsisting contract now in existence between any municipality and any such company;**' **. Until the passage of the act of 1907 the commission was without authority to deal with the subject of fixing fares for street-railways. Until the enactment of that statute they did not exercise, as to street-railway companies, the power to make the rates of charges for transportation of passengers on the lines of street-railways operated by street-railway companies, like that of the applicant in this case.

But the act of 1907, as indicated by its caption, extended and enlarged the powers and duties of the commission, and embraced in these enlarged and extended powers and duties there was, among other things, the authority to fix fares upon street-railroads, and to otherwise exercise control over street-railroad corporations or companies operating street-railways, but in section 5 (the section of the act of 1907 extending the powers of the commission so as to embrace authority to fix fares upon street railroads) the legislature enacted as a part of that section the proviso 'that nothing herein (in the statute extending the powers and duties of the commission) shall be construed to impair any valid subsisting contract now in existence between any municipality and any such company' (street-railroad company). In our opinion the effect of the proviso is to leave the commission where it was before the enactment of the statute, as to its power and authority to determine and fix fares upon the street-railroads in any municipality which had a valid subsisting contract covering that subject with the street-railroad company.

"Counsel for the railway company contend in their arguments that it was not competent for the municipality to enter into a contract with the street-railroad company upon this subject; that the fixing of fares upon street-railroads and other railroads is a matter that falls within the police power of the State; **and... ...that under the provisions of the constitution of the State,** especially that part of the constitution which declares that the exercise of the police power of the State shall never be abridged (Civil Code, Sec. 6464), the municipality and the railway company could not make a binding contract upon this subject. We cannot agree with this contention **in full.** We readily assent to the proposition that the regulation of passenger tariffs, the fixing of fares upon street-railways, as well as upon steam-railways, is a matter falling within the police power, and that neither the legislature of the State nor the legislative body of any municipality can, by ordinances or contracts, abridge the exercise of the police power of the State; **but we do not think that in all cases and in reference to every subject**

which might fall within the police power of the State, it is incompetent for a municipality or other corporation to make a contract in reference to such subject-matter where the State has not seen fit to exercise the police power in reference thereto. Under the constitution of this State, Art. 3, Sec. 7, Par. 20 (Civil Code, Sec. 6448), the General Assembly cannot authorize the construction of any street passenger railway within the limits of an incorporated town or city without the consent of the corporate authorities. Under such provisions the city authorities may withhold their consent for the construction of a street-railroad upon any of the streets of the municipality. It would seem that if they can do this they might **impose conditions** upon which a railroad company might construct its tracks in the streets, **and enter into a contract with the corporation** as to the conditions upon which it should be permitted to construct a railway within the limits of a municipality. *** Where application is made to the municipal authorities by a street-railroad company for the consent of the authorities to the construction of a railway in its streets, it does not seem sound to say that the city authorities could only say yes or no to such a petition; or that the city is compelled to refuse admission altogether or to admit it without any conditions whatever. *** We do not base our opinion that a **street-railroad company and a municipality may,** under certain circumstances, **contract** with reference to rates of fare **entirely** (Does this not mean the holding is based **partly,** and essentially in part, at least?—this question ours) upon that part of the constitution which provides that the legislature shall not authorize a street-railroad company to construct its railways in the limits of a municipality without the consent of the municipal authorities. We think that **where the State has not exercised its police power over the subject of fares upon street-railroads, the municipality and the street-railway may enter into contracts upon this subject that will be valid;** but the right of the municipality to refuse absolutely its consent to the construction of a street-railway within its limits and the constitutional and statutory provisions in

regard thereto, strengthen us in the view that **it is competent for the municipality and the street-railroad company to enter into contracts upon this subject.** ****

"The contracts with the municipalities of College Park and Decatur stand upon a different footing (from other alleged contracts). Those contracts were in existence on the 23rd day of August, 1907, and are still subsisting contracts. As we **decided** in the first part of this opinion, **these contracts are not invalid, but are valid and subsisting contracts and were valid and subsisting contracts on the 23rd day of August, 1907,** and the commission properly held that they were without jurisdiction to fix the fares between the two towns just referred to and the City of Atlanta over the lines of the railway company.

"Nothing that we have said in regard to the matter of contracts between municipalities and street-railway companies upon the subject of fares is to be construed as in any way impairing the police power of the State. We are of the opinion that at any time that the State may act in regard to this matter and extend the powers of the Railroad Commission so as to cover the matter of fares upon street-railways in towns where there are existing contracts, then regardless of such contracts, the commission, in the exercise of the branch of the power thus conferred, can act."

Georgia Railway & Power Co. vs. Railroad Commission of Georgia, 149 Ga. 1, 3, 4, 5, 6, 7, 9.

In the cases of Georgia Railway & Power Co. vs. Decatur and College Park, 152 Ga. 143 (being the judgment of the State Supreme Court upon writ of error from the interlocutory injunction in the present case), the Court, reviewing and adhering to the mandamus decision, again upheld the validity of the College Park contract, and in its opinion, among other things, said: "The right to fix rates on electric railway companies' lines is contained in the amendatory act of August 23, 1907 (Acts 1907, p. 72), **which carries into effect the provision of the constitution,** Art. 4, Sec. 2, Par. 1. *** **The effect of the constitutional provision and legislative enactment carrying it into effect was**

clearly to cover the entire scheme of rate fixing. If there existed, on August 23, 1907, a valid, subsisting contract which fixed the rate, **it was conclusive, and neither the Railroad Commission nor either party to the contract can change or alter it."**

THE MANDAMUS JUDGMENT WAS PROPERLY ADHERED TO.

It was not improper for the State Supreme Court, in the present case, to adhere to the rulings in the mandamus case on the question of the validiy of the contract and the effect of the proviso of the Act of 1907. When the mandamus petition was filed in August 1918 (Record, pp. 58, 73, 122) the Power Company claimed that its rates were wholly inadequate and insufficient to furnish a sufficient income properly to care for and preserve its properties and adequately and efficiently serve the public; and so low as to be inadequate and insufficient to pay the cost of the service and yield a reasonable return on the investment necessary to render the service. (Record, pp. 67, 68). All questions raised in the present case, relative to the validity of the contract either were, or could have been, raised then, with the possible exception of the effect of the subsequent increase of fares on lines other than the Decatur and College Park line. In the mandamus case, the present defendant in error was a party by representation through the State Railroad Commission, appeared therein by counsel and assisted in the defense of same. (Record, p. 46).

The judgment in the mandamus case was conclusive between the parties and their privies as to all matters put in issue, or which under the rules of law might have been put in issue therein.

Park's Ann. Code of Ga., Vol. 3, Section 4336;

Souffront vs. La Compaignie Des Sucreries, 217 U. S. 475, 487; 54 L. ed. 846, 851;

National Subway Co. vs. St. Louis, 145 Mo. 551, 46 S. W. 981;

Board of Education vs. Cosgrove, 11 Ohio Cir. Ct. 163.

THE HOLDINGS OF THE GEORGIA SUPREME COURT IN FAVOR OF THE VALIDITY OF THE CONTRACT, ARE SUBSTANTIAL IN CHARACTER, AND FIND AMPLE SUPPORT IN OTHER JURISDICTIONS.

The Georgia decisions, fully considered above, are not

isolated or peculiar to their own jurisdiction, on the question of the validity of the contract under review. Many decisions of various other States have the same or similar views with respect to the power of municipal corporations and public utilities to contract with reference to rates under constitutional or statutory consent clauses concerning the grant of the right to use and occupy streets, even in the absence of express power to contract relative to such subject matter. A few of these cases are here cited:

Muncie Natural Gas Co. vs. Muncie, 160 Ind. 97, 66 N. E. 436;

Shreveport Traction Co. vs. Shreveport, (La.) 47 So. 40;

Boerth vs. Detroit City Gas Co., 152 Mich. 654, 116 N. W. 628;

Quinby vs. Public Service Commission, 223 N. Y. 244, 119 N. E. 433; **reaffirmed** in Niagara Falls vs. Public Service Commission, 229 N. Y. 333, 128 N. E. 247;

Columbus vs. Public Utilities Commission, (Ohio Supreme Court), 133 N. E. 800, 805 (2), 806, 807, et seq., (exhaustively reviewing every phase of question);

Alleghany vs. Millvale, etc., Ry. Co., 159 Pa. 411, 28 Atl. 202;

Manitowoc vs. Manitowoc, etc., Traction Co., 145 Wis. 13, 19, 129 N. W. 925.

And the view of the Georgia Court that such a contract as to fares is valid and binding between the parties, that is, between the municipality and the utility, so long as and until the State, in the exercise of its police power, sees fit to act, likewise finds support in the authorities of other jurisdictions.

Westinghouse Electric Co. vs. Binghampton R. Co., 225 Fed. 378;

City of Emporia vs. Emporia Telephone Co., 88 Kan. 443, 129 Pac. 187;

Charleston, etc., Lighting Co. vs. Charleston, (S. C.) 75 S. E. 390;

Manitowoc vs. Manitowoc Traction Co., 145 Wis. 13, 129 N. W. 925.

And see particularly Milwaukee Electric Co. vs. Railroad Commission, 238 U. S. 174, 182, 184; 59 L. ed. 1254, 1260, 1261, **affirming** 153 Wis. 592, 142 N. W. 491; wherein this Court, though not bound to do so, followed the State court decision upon the meaning and operation of a state statute similar to the Georgia constitutional and statutory consent provisions, above mentioned; and quoted, with approval, from the Manitowoc case, as follows: "No specific authority having been conferred on the city to enter into the contract in question, the right of the state to interfere whenever the public weal demanded was not abrogated. **The contract remained valid between the parties** until such time **as the state saw fit** to exercise its paramount authority, and no longer. To this extent, and this extent only, is the contract before us a valid subsisting obligation. It would be unreasonable to hold that by enacting ** (the Wisconsin statutes), the state intended to surrender its governmental power of fixing rates. That power was only **suspended until such time as the state saw fit to act."**

Further, the Georgia statute, known as the Act of 1907, is not alone in exempting from the operation of the powers of a public utilities commission, contracts relative to rates.

Springfield Gas & Electric Co. vs. City of Springfield, (U. S.) 66 L. ed. 38;

Arkansas Natural Gas Co. vs. Arkansas Railroad Commission, No. 500, October Term, 1922, decided by this court March 19, 1923.

Minneapolis, etc., R. Co. vs. Menasha, (Wis.) 150 N. W. 411.

THE STATE HAS NOT SEEN FIT TO EXERCISE ITS PARAMOUNT AUTHORITY OVER THE CONTRACT.

The mandamus case was decided by the State Supreme Court on March 15, 1919 (149 Ga. 2); the present suit was started in the lower State Court on October 18, 1920 (Record, p. 57), and judgment affirming the interlocutory injunction was rendered September 27, 1921. In July, 1919, there was introduced in the House of Representatives

of the General Assembly of Georgia a bill to limit the operation of the proviso of the Act of 1907, which as introduced, and as it was finally enacted (Ga. Laws, 1919, p. 94), did not affect the contract in question. However, after the bill passed the House, it was amended in the Senate in such manner that it would have affected the contract. This amendment, was disagreed to by the House, and the contract was unaffected by the change made by the Act of 1919. (Record, p. 27). In 1921, the General Assembly of Georgia, by Act approved August 16, 1921 (Ga. Laws, 1921, p. 111), relating to the incorporation and powers of interurban railroads operated by gas or electricity and the jurisdiction of the Railroad Commission over same, provided, among other things, as follows: "Provided, however, that nothing herein shall be construed to impair any valid, subsisting contract now in existence between any municipality and any railroad company or any street of interurban railroad or railway company, and provided this Act shall not operate as repeal of any existing municipal ordinance. And the Railroad Commission shall not have the power and authority under this Act to increase the fares on the lines of such companies which have heretofore been fixed by contract between such companies and any municipality."

This Act of 1921 was in force at the time of the hearing on the question of the grant of a permanent injunction in the lower state court (January 18, 1922), and also at the time of the amendment to the answer in said court (November 3, 1921), and yet it was not attacked by the defendants in the Court below then or at any other time, on any ground or in any way. The allegations of the original petition were broad enough to entitle the plaintiff below to its protection. The petition was for an injunction, which operates **in futuro.**

Compare Duplex Printing Press Co. vs. Deering, 254 U. S. 443, 464, 65 L. ed. 349, 355;

American Steel Foundries vs. Tri-City Council, (U. S.) 66 L. ed. 103, 108;

Texas Co. vs. Brown, (U. S.), 66 L. ed. 428.

EFFECT OF FINDING IN FAVOR OF VALIDITY OF CONTRACT.

If this Court determines that there was and is a valid contract, either by following the State Court decisions, or by independent finding, then the question whether the rate is unremunerative or too low to give a reasonable return, is immaterial; and the plaintiffs in error cannot complain that the operation of the contract would take its property without due process of law, and deny it the equal protection of the laws, in violation of the 14th amendment to the Federal Constitution.

Paducah vs. Paducah R. Co., (U. S.) 67 L. ed. 284, 286, **citing** Southern Iowa Electric Co. vs. Chariton, 255 U. S. 539, 542; 65 L. ed. 764, 775; and San Antonio vs. San Antonio Pub. Serv. Co., 255 U. S. 547, 65 L. ed. 777.

THE CONTRACT FALLS WITHIN THE OPERATION OF THE PROVISO OF THE ACT OF 1907, AND THAT ACT AND ITS PROVISO ARE NOT UNCONSTITUTIONAL.

The effect of the Act of 1907, which carried into effect a State constitutional provision, was clearly to cover the **entire** scheme of rate fixing.

Georgia Railway & Power Co. vs. Decatur, 152 Ga. 143, 149.

The classification made in the Act by its proviso was neither unreasonable nor arbitrary, and was clearly within the power of the State to enact, and does not violate the 14th amendment to the Federal Constitution. The proviso withstood an attack based on the equivalent State constitutional provisions (Record, p. 71) in the mandamus case. (149 Ga. 1.)

A long line of decisions by this Court has settled that, in the exercise of the police power, reasonable classification may be freely applied, and that regulation is not violative of the equal protection clause merely because it is **not all-embracing.**

Zucht vs. King, (U. S.) 67 L. ed. 28.

Any classification adopted by a state in the exercise of its police power which has a reasonable basis, and is, therefore, not arbitrary, will be sustained against an attack based upon the equal protection of the laws clause of

the 14th amendment; and every state of facts sufficient to sustain such classification which can be reasonably conceived of as having existed when the law was enacted will be assumed.

Crescent Cotton Oil Co. vs. Mississippi, (U. S.) 66 L. ed. 55, 58.

Thus classification of individuals and corporations; public-service and other corporations; and municipal and other corporations, have all been sustained.

Crescent Cotton Oil Co. vs. Mississippi, **supra;**

Prudential Ins. Co. vs. Cheek, (U. S.) 66 L. ed. 626;

Chicago, etc., R. Co. vs. Perry, (U. S.) 66 L. ed. 635;

Springfield Gas & Electric Co. vs. Springfield, (U. S.) 66 L. ed. 38.

See also Heisler vs. Thomas Colliery Co., (U. S.) 67 L. ed. 119;

Durham Public Serv. Co. vs. Durham (U. S.) 67 L. ed. 330, 332.

In the Springfield case, **supra,** it was held by this Court that leaving free in the matter of charges a municipality engaged in producing and selling electricity to private consumers, while making the rates of private electric companies subject to the approval of the state public utilities commission, as is done by Illinois statutes, all part of a single plan, does not deny to the private corporation the equal protection of the laws. The contention of the private corporation in that case was that the **exception of municipal corporations** from the Public Utilities Act was void, under the 14th amendment, and that the Act should be enforced as if the exception were not there.

In the case of Arkansas Natural Gas Co. vs. Arkansas Railroad Commission, No. 500, October Term, 1922, decided by this Court on March 19, 1923, this Court held that an Act of Arkansas transferring to the Railroad Commission jurisdiction theretofore possessed by the Corporation Commission, and providing that the Railroad Commission "shall have no jurisdiction or power to modify or impair any existing contracts for supplying gas", etc. (construed by the Court to except all proceedings pending before the Corporation Commission transferred to the Railroad Commission and not alone the three specified cases) did not

violate the 14th amendment. The Court said: "The presumption is that the action of the legislature—which applies alike to all falling within the class—was with full knowledge of the conditions and that no arbitrary selection of persons for subjection to the prescribed rule was intended. ** The state legislature is vested with a wide discretion in the matter and interference by this Court may not be had merely because its exercise has produced inequality—every selection of subjects or persons for governmental regulation does that—but only where it has produced an inequality which is actually and palpably unreasonable and arbitrary."

ASSIGNMENTS OF ERROR AND THE RECORD.

The foregoing would seem effectually to dispose of all of the Assignments of Error, except those numbered four, five and six, based upon the contract impairment clause of the Constitution. And this assumes that the Assignments of Error find basis in and are supported by the record. However, a comparison of the Assignments with the Federal questions raised or attempted to be raised by the pleadings, indicates some marked differences. Furthermore, none of the Assignments of Error based on the contract clause of the Constitution was made until after the judgment of the State Supreme Court on the first appeal, when they were set up, for the first time, in an amendment to the answer.

Assignments of error made for the purpose of bringing a case to the Federal Supreme Court cannot be looked to for the purpose of originating a right of review there. The right to review must be predicated on rulings concerning claims set up and denied in the State Court. Neither the petition for writ of error in the state court after judgment, nor the assignments of error in the Federal Supreme Court, nor the fact that the Chief Justice of the State Court allowed the writ, can supply deficiencies in the record of the State court, if such exist.

Appleby vs. Buffalo, 221 U. S. 524, 529; 55 L. ed. 838, 841;
Hulbert vs. Chicago, 202 U. S. 275, 50 L. ed. 1026.

And the final judgment of the highest court of a state

is not reviewable in the Federal Supreme Court as a decision in favor of the validity of a state statute challenged as repugnant to the Federal Constitution, where such question is not raised or specially set up in the trial court, and the appellate court does nothing more than decline to pass upon the Federal question because it is not raised in the trial court as required by the state practice.

Erie Railroad vs. Purdy, 185 U. S. 148, 46 L. ed. 847.

According to the state practice in Georgia, the State Supreme Court will not pass upon the constitutionality of a statute where the question is not raised in the trial court.

Palmer vs. Phinizy, 151 Ga. 589, 591.

And the question must be raised **and passed upon** by the trial court; it cannot be reviewed if made for the first time in the bill of exceptions from the trial court to the appellate court.

Patterson vs. Bank of Alapaha, 148 Ga. 356.

The clause of the constitution which it is claimed is violated, must be designated.

Atlanta vs. Standard Life Ins. Co., 149 Ga. 501.

And the law which it is contended is unconstitutional must be specified.

Gunn vs. Atwell, 148 Ga. 137.

In Georgia, it is an elementary rule of construction, as applied to a pleading, that it is to be construed most strongly against the pleader.

Krueger vs. MacDougald, 148 Ga. 429.

In this Court, it is firmly established that where a Federal question is raised on a second appeal and the State Court refuses to consider it, it comes too late.

Bonner vs. Gorman, 213 U. S. 86, 91; 53 L. ed. 709, 711.

Tested by the foregoing principles, how stand the Assignments of Error? They necessarily are to be limited by or contracted to the Federal questions timely and properly raised and passed upon in the State Courts. And the Federal questions may thus be considered by this court as they are raised in the pleadings in the trial court; assuming, of course, that they are included in the assignments.

The Federal questions on the first appeal. At the time of the first appeal, from the grant of the interlocutory injunction, the only Federal questions involved were those raised by the original answer and so-called cross-bill. The first appeal was decided September 27, 1921. The amendment to the answer was filed November 3, 1921. (Record, pp. 22, 201). As matter of fact, the answer and so-called cross-bill was nothing more than an answer. It is true there were prayers at the end of it, but they asked for no more relief than the defendant Companies would have been entitled to or would have received by a mere denial of the prayers of the plaintiff. However, on the first appeal, the State Supreme Court considered, in its opinion, the relief which the defendant Companies had asked.

The Federal questions, as made by the original answer, are set forth substantially on pages 7 to 11 of this Brief. They are as follows:

(a) That under **orders** of the Railroad Commission the service on the College Park line has been increased from six to twelve cars per hour, over a period of approximately fifteen years; that by an order of September 22, 1920, they were required, as early as practicable, and **if** the necessary equipment could be secured, within six months from October 1, 1920, to put on trailers during rush hours; that **if** the Commission has power to make the order, it is an order of the state, and is an order, which together with the **other orders,** makes the **additional service** confiscatory; and **if the law** gives the power to the Commission and the orders are valid, the 5 cent fare, **with the increased service,** will amount to confiscation and deny equal protection of the laws under the 14th amendment.

The conditional manner in which this question, or these questions, are raised, is enough to condemn it.

Palmer vs. Phinizy, 151 Ga. 589, 591.

The date and requirements of the **other orders** are not set forth; it does not appear that the trailer order was ever complied with; it was purely conditional; it is not alleged that any of the orders are valid; the issue as to their validity is evaded.

But overlooking all these defects, no Federal right has been violated.

The public have the right to demand efficient service, and the Railroad Commission is given full power to require that the Companies shall render efficient service.

Union Dry Goods Co. vs. Georgia Public Serv. Corp., 142 Ga. 841, 846.

See also City of Columbus vs. Public Utilities Com., (Ohio Supreme Court), 133 N. E. 800, 807.

And the mere requirement on the part of a Corporation Commission, affirmed by the highest State court, that a public utility render efficient service in carrying out its charter purposes, does not violate the 14th amendment.

Oklahoma Natural Gas Co. vs. Oklahoma, (U. S.) 66 L. ed. 331.

(b) That under the 14th amendment, the Railroad Commission cannot order increased service, where it has no authority to increase fares to pay for the increase and provide a reasonable return upon the value of the property used in performing **said service;** that in 1917 (over three years and a half before the suit was brought) the plaintiff requested the Railroad Commission to investigate traffic conditions, and a remedy for same in such way and manner as might seem just and right, both to the Company and to the public; and **if** petitioner undertook to have the Commission regulate service, it would be the action of **petitioner** which would cause a confiscation of defendants' property.

These allegations are mere conclusions, without substance, and easily disposed of by what has been said above. A mere aged request certainly could not amount to confiscation.

(c) That **if** the Act of 1907 is construed to authorize the Railroad Commission to require **increased service**, without the power to increase fares with reference to **such service**, the Act is confiscatory, unconstitutional, and void (the allegations are general); that **either** the Act **or** the construction is violative of the 14th amendment, because any act which deprives the Commission of the power to in-

crease the rate of fare, but grants it the power to increase service to such an extent that such increased service will require an income in excess of that produced by any rate of fare protected by the Act, would render the Act confiscatory; **and defendants attack said exception.** This is but another assignment relative to increased service. It is claimed that **either** the Act **or** the exception thereto is unconstitutional, but the exception only is attacked. It has already been seen that the exception or proviso of the Act is not violative of the 14th amendment. (Brief, pp. 36-38). The matter of increased service has already been fully answered. If the entire Act, and not merely the exception, had been attacked, and the whole Act had been declared invalid, the defendants would be no better off than they are now, for the Railroad Commission would be without jurisdiction, and the contract still good.

Compare Springfield Gas & Electric Co. vs. City of Springfield, (U. S.) 66 L. ed. 38.

(d) This Federal question relates to the matter of classification brought about by the proviso of the Act of 1907, and has already been considered above. (Brief, pp. 36-38). Probably the Assignment of Error with respect to this question (Record, pp. 6, 7, No. 3-a) should not be considered at all, because of the injection into it of the Act of 1919. This Act is nowhere referred to in the record.

(e) The Federal question here raised relates to the alleged confiscation which would result from operation under the contract; and has already been considered above, under the catch-line, "Effect of finding in favor of validity of contract".

In this connection, attention is called to the suggestion of plaintiffs in error that the Railroad Commission, in its order of September 22, 1920, expressly held that under the so-called contract provision the service with reference to College Park traffic is not fairly compensatory, and that such ruling was made with reference to the then existing service required by the commission. (Record, pp. 145, 149). This statement on the part of the Commission was **coram non judice.** The mandamus case had been decided on

March 15, 1919. It was beyond the jurisdiction of the Commission officially to say or rule anything about the effect of the operation of the College Park contract, at the time of this order. Furthermore, the order was made on an application of the Power Company, filed in the summer of 1920, for permission to increase fares on all lines, **except the College Park and North Decatur lines** to which, of course, these cities were not parties. There was, therefore, no binding finding.

In this connection, see Wadley So. R. Co. vs. State, 137 Ga. 497;

Wichita R., etc., Co. vs. Public Utilities Commission, (U. S.) 67 L. ed. 52, 56, 57.

(f) It should probably be noted here that in the original answer it was admitted (paragraph ten) that when the Power Company took charge of the Electric Company's system of street railway, and began to operate same, it kept in force the free transfer privilege to and from College Park, as had been afforded by the Electric Company, and that there had been no discontinuance of same (Record, pp. 45, 130), but that the Companies denied the authority of the Railroad Commission to require the issuance of transfers to the College Park traffic, and claimed that **they themselves** had the right, power and authority to discontinue same; and that they further alleged that the contentions made in the answer "with reference to illegal, discriminatory and unconstitutional rates with reference to College Park traffic also apply with reference to transfers demanded by and issued to such passengers." (Record, pp. 130, 131). These allegations are not only entirely too general, but refer to no specific order or orders relative to transfers, and even if they had done so, might properly be referred to the various state constitutional provisions invoked.

Layton vs. Missouri, 187 U. S. 356, 47 L. ed. 214.

See also authorities cited above to general principles regarding raising of constitutional questions.

Federal questions raised by amendment to answer. In

the amendment to the answer, which was filed after the interlocutory injunction had been granted and affirmed on the first appeal, plaintiffs in error raised for the first time questions under the contract clause of the Federal Constitution. (Record, pp. 195 to 200).

The judgment of the State Supreme Court on the second appeal in the present case having been decided on the doctrines of "law of the case" **and res adjudicata,** the Federal questions attempted to be raised in the amendment to the answer came too late.

Bonner vs. Gorman, **supra;** (Brief, p. 39).

Northern Pacific R. Co. vs. Ellis, 144 U. S. 458, 464; 36 L. ed. 504, 506;

Yazoo, etc., R. Co. vs. Adams, 180 U. S. 1, 6, 7, 8; 45 L. ed. 395.

Even if these questions had been raised in time, they were not in proper form. Plaintiffs in error at all times prior to this amendment contended that the rate provision was not a contract; and even in the assignments based on the contract clause of the constitution, they are careful not to make any direct admission or contention as to the existence of a contract, calling it an alleged contract or a claimed contract; and, in one instance, raising a question under the contract clause, **if** the court holds the contract valid. Furthermore, there is no positive allegation that the statutes mentioned impair the contract obligations; the questions are raised on possible constructions.

Palmer vs. Phinizy, 151 Ga. 589, 591.

The Federal questions raised by amendment are without merit. Even if the Federal questions attempted to be raised in the amendment to the answer had been timely and properly brought to the attention of the Court, they were without substantial merit. They all revolve around the matter of the construction of that provision of the franchise contract which relates to the territorial operation of the five cents fare, to wit, "from the southern limits of said City of College Park to some central point in the City of Atlanta". At the time the suit was brought the

distance from a central point in the City of Atlanta to the present northern limits of College Park (College Park is south of Atlanta) was 7.309 miles, and the length of the line of railway within the present limits of College Park, was 1.173 miles, which included 780 feet, or about one-sixth of a mile, which had been added to the territory of College Park on its northern side after the execution of the franchise contract in 1905, to wit, in 1906. (Original answer, Record, pp. 133, 137). The original answer first made the contention that the contract fixes fares not only within the municipal limits, but also over the entire College Park line which extended through the County and other municipalities outside of College Park, and was, therefore, **ultra vires,** contrary to public policy, illegal, unconstitutional and void. Then the inconsistent contention was made that it operated only from one point in the City of College Park, to wit, its southern limits, in only one direction, to wit, to Atlanta; that it did not operate from Atlanta to College Park, nor from any point in College Park, except the southern limits thereof, to Atlanta; and that it did not operate in the added territory of 780 feet. (Original answer, paragraphs 34, 36, 37; Record, pp. 134, 136). Thus, it will be seen, the construction of the provision, with respect to its territorial operation, was clearly involved in the first appeal. The answer and so-called cross-bill had not been stricken on demurrer at that time. The petition alleged that the proper construction of the provision was that it operated in both directions, and to and from any point in College Park, and that this construction had been placed upon it by the parties (Record, p. 45). One of the prayers of the petition was that the injunction prayed for should operate as against any increase of fares from Atlanta to College Park, and **vice versa.** (Record, p. 50). The injunction, both interlocutory and permanent, was granted, as prayed. It further appeared that the single track in College Park ended at one point, its southern terminus, and the double track at another; and that the southern terminus had never been extended to the extreme southern limits of College Park.

It further appeared that the Electric Company had waived its right to extend its tracks to the extreme southern limits of College Park, in favor of another Company; and that its southern terminus has always remained at the same point. (Record, pp. 30, 31, 32).

None of the Federal questions based on alleged impairment of contract, with respect to the territorial operation of the franchise contract, having been raised on the first appeal, the State Supreme Court, on that appeal, necessarily by judicial construction decided the question made as to the operation of the contract, in favor of its operation in both directions and to and from all points within the present limits of College Park. And it is insisted that this was the only reasonable and proper construction to be placed upon it; and one which this Court would recognize. See also the Mandamus case.

When there can be no pretense that the State Court adopted its view of the proper construction of a contract in order to evade a constitutional issue, and the case has been decided upon grounds that have no relation to any Federal question, the Federal Supreme Court accepts the decision, whether right or wrong.

Nickel vs. Cole, 256 U. S. 222, 225, 65 L. ed. 900, 905.

The Federal Supreme Court does not sit to revise the construction of documents by state courts.

Seattle, etc., R. Co. vs. Washington, 231 U. S. 568, 58 L. ed. 382.

The construction of the provision in the respect under consideration was by judicial action,—judicial decision. The contract clause of the Federal Constitution prohibits legislative, not judicial, action. Impairment of a contract by judicial decision does not raise a Federal question which can be reviewed by the Federal Supreme Court on writ of error to a state court.

Kryser vs. Wilson, 242 U. S. 171, 61 L. ed. 229;

McCoy vs. Union Elev. R. Co., 247 U. S. 354, 363; 62 L. ed. 1157, 1165, and cases cited.

So far as the Act of 1906 is concerned, it is an Act merely adding a strip of territory 780 feet in length or width to College Park. (Ga. Laws, 1906, p. 650). There is, of course, nothing in it about extending the effect of the franchise contract over the added territory. It cannot be the case that construction of this Act extends the rate provision over the territory added by it; the construction of the rate provision does that. And so with the Act of 1907. And if neither one of these Acts impairs the College Park contract, it is difficult to understand how they can impair the Fulton County contract which is claimed to cover the added territory; and certainly there can be no such thing as the impairment of the County contract by the College Park contract.

The effect of requirement of increase in quality or quantity of service has already been considered in another connection; and it is deemed necessary merely to refer to what was there said as fully answering the contention made with respect thereto in the amendment to the answer. (Brief, p. 41).

The validity of none of the orders of the Railroad Commission complained of, has been tested by resort to the safe, adequate and available remedy under Ga. Civil Code, 1911, Sec. 2625, so far as appears from the present record; on the other hand, plaintiffs in error have, more than once, invoked the jurisdiction of the Railroad Commission for increased rates, and with success, except as to the College Park and Decatur fare contracts; the Railroad Commission had jurisdiction with respect to the orders vaguely referred to as relied on, if the contract was held to be valid; and plaintiffs in error cannot be heard in the present proceeding with respect thereto.

Compare Wadley So. Ry. Co. vs. Georgia, 235 U. S. 651, 59 L. ed. 405, affirming 137 Ga. 497.

PLAINTIFFS IN ERROR CANNOT SURRENDER CONTRACT AND CEASE OPERATION.

In the original answer, the plaintiffs in error state: "If it be held by the court that defendants cannot terminate said contract provision, without at the same time giving up the right to operate its cars within the municipal limits

of College Park and giving up any right they may have under the other provisions of said so-called franchise contract, defendants say that they hereby surrender all rights they may have under and by virtue of said so-called contract franchise and ask the court to declare all their rights under and by virtue of said contract null and void and to relieve the defendants of operating said line within the limits of College Park and to permit defendants to take up their said tracks within the corporate limits of College Park. *** If the court should hold that said so-called contract provision is binding unless defendants abrogate the entire so-called franchise contract and terminate the entire contract defendants hereby offer to surrender the entire contract and cease to operate in or within petitioner's territorial limits."

(Record, p. 147).

The above language is in that portion of the so-called cross-bill, which if it were, in fact, a cross-bill, would be the stating or charging part thereof. Nothing like it is even hinted at in the formal prayers, or praying part, of the alleged cross-bill. They really pray only for the setting aside of the contract, with the retention of everything they acquired under it, and with the protection of a court of equity for their own rates, as and to be fixed by them.

There was no allegation of an offer to surrender the franchise before the suit was brought; there was legally no such offer pleaded in the suit. There was no issue in the case as to the right to surrender the franchise and cease operation .There was no occasion whatever to hold that the contract was not only valid, but could not be terminated or abrogated except by surrender of the franchise. No such question was raised by proper pleading. The allegations above set forth constituted nothing more than an offer to do something after the litigation had begun, on an issue, different in its nature from that forced by the plaintiffs in error and squarely met; and, indeed, only after that issue should have been determined in the litigation, and if it should be determined in a certain way.

But aside from the way in which the question is presented, there was no right on the part of the plaintiffs in error to surrender their franchise and cease operation of their cars. They had **agreed** in writing, in the acceptance of their franchise, to construct, electrically equip **and operate** the double track line of electric railway as provided by said ordinance. They could not surrender and cease to function. **They were bound by the contract to operate.** "If it is a valid, subsisting contract, the Power Company is bound by it." (152 Ga. 146).

In the case of Macon Railway & Light Co. vs. Corbin, et al., No. 3011, in the Supreme Court of Georgia, decided February 28, 1923, rehearing denied March 3, 1923, it appeared that the Macon Railway & Light Company, a corporation chartered by the Secretary of State, with power to construct and operate an electric railway, desiring to extend its line of railway to points beyond the limits of the City of Macon, applied to the Board of Commissioners of Bibb County for the right to construct its railroad over and along portions of certain public roads. The Board, in regular session, passed a resolution which, so far as material to be stated, was as follows: "Ordered: That the consent and permission of this Board be and the same is hereby granted to said Macon Railway & Light Company to use the following described public roads (describing them). The consent and permission hereby granted ** are subject to all laws now of force, or that may hereafter become of force, applicable to the matter; and are granted subject to the following terms, conditions and stipulations, to wit: *** 5th. That said Railway & Light Company, its successors and assigns, shall, in the operation of said street railroad, maintain a schedule of not more than thirty minutes between cars, running each way. 6th. That this grant shall be void and of no effect, unless said company shall for itself, its successors and assigns, accept and agree to the terms, conditions and stipulations of the same; such acceptance and agreement to be in writing and entered upon the minutes of this Board, along with this order, as a part thereof."

In compliance with the terms of the foregoing resolution, the Macon Railway & Light Company accepted in writing the franchise, and proceeded thereafter to exercise the grant; it constructed its line over the specified portions of the public roads and thereafter operated its cars over its extended line of railroad in its usual service of the public. After the line had been operated for a number of years, the Company determined to abandon a portion of it on the ground that its operation was unprofitable and could only be run at a loss. It ceased operation on such portion, and commenced to dismantle its tracks, when certain citizens of Bibb County, who had made investments and built houses along its line, and who were interested in the continued operation thereof, filed a petition in equity to enjoin the Company from dismantling and taking up its line of railway.

The Court, after holding that the plaintiffs had such an interest in the matter as would authorize them to file a petition for injunction, held that the grant of the right to the street-railway company to construct its line of railway over the specified portions of the public roads of Bibb County, upon the terms and conditions expressed in the resolution, and the acceptance thereof in writing by the street-railway company, constituted a valid contract, **binding the street-railway company to operate said railway according to the terms mentioned in said resolution.**

We apprehend that the question of the right of the street-railway company to surrender its franchise and cease operation is one of local law, with which this Court will not concern itself.

INTERVENORS TOOK CASE AS THEY FOUND IT.

Even if the Assignments of Error relating to alleged Federal rights of the intervenors could be considered in the absence of the intervention and demurrer thereto from the Transcript of Record (Brief, pp. 15, 16), they took the case as they found it, and, having cast their fortunes with the defendants in that case, they must stand or fall with them.

Love vs. Goodson, 150 Ga. 46.

Furthermore, the operation of the contract did not, as a matter of fact, discriminate against the intervenors. They were entitled to its benefits, along with the rest of the public. Its operation was not limited to **residents** of College Park.

That its operation did not amount to illegal discrimination, under State law, was settled by the mandamus case, and the decisions in the present case.

See also Wadley So. R. Co. vs. State, 137 Ga. 497, 509;

Forman vs. New Orleans, etc., R. Co., 40 La. Ann. 446, 4 So. 246.

Being a contract, it did not violate the equal protection of the laws clause of the 14th amendment of the Federal Constitution.

Paducah vs. Paducah R. Co., (U. S.) 67 L. ed. 284, 286

THE PETITION FOR WRIT OF CERTIORARI IN THIS CASE SHOULD BE DENIED.

Where a writ of error lies from the Federal Supreme Court to a state court, a petition for certiorari that was presented for greater caution, will be denied.

Gillespie vs. Oklahoma, (U. S.) 66 L. ed. 211.

Respectfully submitted,

GEO. P. WHITMAN,

Attorney for Defendant in Error, and Respondent in Certiorari.

Supreme Court, U.S.
FILED
MAR 23 1923
WM. R. STANSBURY

Supreme Court Of The United States

October Term 1922

No. 464

GEORGIA RAILWAY AND POWER COMPANY et al., Plaintiffs in Error and Petitioners in Certiorari,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, Defendants in Error and Respondents in Certiorari.

FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

Brief for Plaintiffs in Error and Petitioners in Certiorari.

L. Z. ROSSER,
J. PRINCE WEBSTER,
WALTER T. COLQUITT,
Attorneys for Plaintiffs in Error and Petitioners in Certiorari.

SUBJECT INDEX

	Page
Statement of Case	1
The Allegations of the Amended Petition	2
Answers and Cross Bills of Electric and Power Companies and of numerous individual patrons of the street railway companies	6
Rulings of the Court	13
Effect of Judgment on Demurrer and Decree	14
Judgment sustaining general demurrer to Answers and Cross Bills	14
Specification of Errors raised and relied upon	14
Main Contention of Municipality	22
Contentions of Railway Companies and Intervenors	22
A Federal question is raised whether or not the rate ordinance of November 6, 1905, is a contract	23
Rate provision of Ordinance of November 6th, 1905, not a contract	25
Not in substance a contract	25
Municipalities in Georgia given no authority to enter into binding rate contracts	27
Georgia Constitutional provisions prevent a Municipality from making rate contracts	28
Street railway companies have no power or authority to enter into binding rate contracts	29
Claimed rate provisions terminated prior to institution of present suit	31
Rate contracts indefinite as to duration terminable upon reasonable notice	32

Page

Rate provision terminated by action of the state 33

Forbidden by the Constitution of the State of Georgia.... 35

Forbidden by the Statute Law of Georgia 36

A Rate non-discriminatory when executed may subsequently become an illegal and discriminatory rate.. 38

Rate contract terminated by State action making rate confiscatory as well as discriminatory 38

Rate provision terminated by Legislative Acts of Georgia extending territorial limits 40

Second Assignment of Error 41

Third Assignment of Error 42

Sub-Paragraph (C) of the third assignment of error 47

Sub-Paragraph (B) of the third assignment of error.... 47

Fourth and Fifth Assignments of Error 48

Sixth Assignment of Error..... 49

Seventh Assignment of Error 51

TABLE OF CASES

Page

Altenberg vs. Grant, 85 Fed. 345 36

American Ry. Express Co. vs. So. Dakota, 244 U. S. 617 37

Americus Ry. & Light Co. vs. Mayor, etc., of Americus, 136 Ga., 25 25

Arkadelphia Milling Co. vs. St. Louis S. W. R. Co., 249 U. S. 134 34

Armour Packing Co. vs. United States, 209 U. S. 56.... 38

Bearden Merc. Co. vs. Madison Oil Co., 128 Ga. 703 32

Brooks-Scanlon Co. vs. R. R. Comrs. of La., 251 U. S. 291, 299 52

California Adjustment Co. vs. Southern Pacific Co., 266 Fed. 349 36

Castle vs. Massa, 91 Ohio State 296; 110 N. E. 464..... 44

Central Power Co. vs. City of Kearney, 274 Fed. 253 22, 27

Chicago Ry. Co. vs. Minnesota, 134 U. S. 418, 458..... 40

Chicago R. I. & P. Ry. Co. vs. Ketchum, 212 Fed. 896.... 46

City and County of Denver vs. Stenger, 277 Fed. 865, 870 ..... 27, 29, 31

City of Arcota vs. Green, et al., 106 Pac. 86 26

City of Atlanta vs. Old Colony Trust Co., 88 Fed. 859 27

City of Cleveland vs. Cleveland City Ry. Co., 194 U. S. 517, 531 ..... 32, 34

City of Dawson Water Works Co., 106 Ga. 699, 726 25

City of Englewood vs. Denver & A. P. Ry. Co., 248 U. S. 294 ..... 27, 44

Page

City of Mitchell vs. Board of R. R. Comrs., 184, N. W. 246 ..... 28, 29

City of New Orleans vs. O'Keefe, 280 Fed. 92 29

Connolly vs. Union Sewer Pipe Co., 184 U. S. 539, 556 42, 47

Cotting vs. Goddard, 183 U. S. 79 ..... 42, 47

Detroit United Ry. Co. vs. Michigan, 242 U. S. 238 249 ..... 23, 48, 49, 50

Detroit United Ry. Co. vs. Michigan, 248 U. S. 429, 436, 437 48

Elliott Machine Co. vs. Center, 277 Fed. 124, 126 38

Gandolfo vs. Hartman, 49 Fed. 181 36

Georgia R. R. vs. Smith, 70 Ga., 694, 703; affirmed 128 U. S. 174, 180 26

Ga. Rwy. & Power Co. vs. R. R. Com. of Ga., 149 Ga. 1.... 44

Ga. Rwy. & Power Co. vs. Town of Decatur, 152 Ga. 143, 146 30

Gulf C. & S. F. R. Co. vs. Ellis, 165 U. S. 150, 159..... 42, 47

Headleys, Admr. vs. San Francisco, 124 U. S. 639, 645.... 24

Home Tel. & Tel. Co. vs. Los Angeles, 211 U. S. 265.... 26, 27, 31, 48

Horkan vs. City of Moultrie, 136 Ga. 561 27

Houston vs. Texas C. Rd. Co., 177 U. S. 66, 67 51

Houston E. & W. T. R. Co. vs. United States, 234 U. S. 342 ..... 34, 37

Hurley vs. Big Sandy etc. R. Co., 137 Ky., 216 36

Jones vs. Newport News & M. Co., 66 Fed. 736, 741 (2) 33

Kansas City So. Ry. Co. vs. Road District, 256 U. S. 658 45

Page

Knight vs. Suddeth and Crenshaw, 126 Ga. 231 (1) 25

Knoxville Gas Co. vs. City of Knoxville, 261 Fed. 284 (6) 22

Lake Shore & Mich. So. Ry. vs. Smith, 173 U. S. 684 46

Leonard vs. American Life & Annuity Co., 139 Ga. 274, 276 ..... 38, 46

Louisiana Ry Co. vs. Behrman, 235 U. S. 164, 170 49

Louisville & Nashville R. R. Co. vs. Motley, 219 U. S. 467, 484 38

Louisville & N. R. Co. vs. R. R. Comrs. of Tenn., 19 Fed. 697 47

McCullough-Dalzell Crucible Co. vs. Philadelphia, 72 Atl. 633 33

McCullough vs. Commonwealth of Va., 172 U. S. 102, 109 23

McLendon vs. City of LaGrange, 107 Ga. 357 38

Manufacturers Co. vs. United States, 246, U. S. 457, 481 34

Milwaukee Elec. Co. vs. Wisconsin, 238 U. S. 174 ..... 26, 27

Milwaukee Elec. Ry. Co. vs. Wisconsin, 252 U. S. 100, 103 23

Mississippi R. Co. vs. Mobile & O. R. Co., 244, U. S. 388 ..... 39, 40, 48, 49

Municipal Gas Co. vs. Pub. Service Com., 225 N. Y. 89; 121 N. E. 772 44

Neal vs. Town of Decatur, 142 Ga., 205 27

Norfolk & Western Ry. Co. vs. W. Va., 236 U. S. 605 ..... 40, 52

No. Pacific Ry. Co. vs. No. Dakota, 236 U. S. 585 ..... 40, 52

Page

O'Keefe vs. City of New Orleans, 273 Fed. 560 ..... 29, 31

Oklahoma Operating Co. vs. Lane, 252 U. S. 331, 335 34

Opelika Sewer Co. vs. City of Opelika, 280 Fed. 155, 159 ..... 27, 29, 31

Portland Ry. Light & Power Co. vs. R. R. Com. of Oregon, 229 U. S. 397, 414 37

Postal Cable Tel. Co. vs. Cumberland Tel. & Tel. Co., 177 Fed. 726, 728 34

Producers Trans. Co. vs. R. R. Com. of California, 251 U. S., 228, 232 44

Raleigh & Gaston Rd. Co. vs. Swanson, 102 Ga., 754 22

Raymond Lbr. Co. vs. Raymond L. & W. C., L. R. A. 1917-C, 574 38

Reagan vs. Farmers Loan & Trust Co., 154 U. S. 362 40

Risley vs. City of Utica, 179 Fed. 875 (4) 885 ..... 32, 33

Rhode Island vs. Palmer, 253 U. S. 250, 386, 387 (6, 7) 35

San Antonio vs. San Antonio Pub. Service Co., 255 U. S. 547 ..... 24, 26, 27, 28

Savannah Ry. Co. vs. Williams, 117 Ga. 420 43

Smyth vs. Ames, 169 U. S. 466, 526 40

South Pasadena vs. Los Angeles, 41 Pac. 1094 26

Southern Iowa Elec. Co. vs. Chariton, 255 U. S. 539 ... 24, 28

State & County of Denver vs. Stenger, 277 Fed. 685 26

State vs. St. Louis S. W. Ry. Co., 197 S. W. 1006 ..... 31, 36

State ex rel. vs. Omaha C. B. & C. R. Co., 52 L. R. A. 315 34

Page

Stearnes vs. State of Minnesota, 179 U. S. 223, 232 23

Tampa Waterworks Co. vs. Tampa, 199 U. S. 241, 242 31, 35

Texas & P. Ry. Co. vs. City of Marshall, 136 U. S., 393 ..... 32, 51

Texas Ry. Co. vs. Scott, 77 Fed. 726, (2) 33

Thomas vs. United States, 101, U. S. 74 (4) 29

Tift, et al., vs. Southern Ry. Co., et al., 123 Fed. 789 (5) 37

Town of Pacific Jct. vs. Dyer, 19 N. W. 862, 863 28

Traux vs. Corrigna, 257 U. S. 312 46

Union Dry Goods Co. vs. Public Service Corp., 142 Ga. 841, 846 ..... 39, 45

United States vs. Memphis, 97 U. S. 284 50

University vs. People, 99 U. S. 309, 323 24

Vandalia R. R. Co. vs. Schnull, 255 U. S. 113 ..... 40, 52

Washington & P. C. Ry. Co. vs. Magruder, et al., 198 Fed., 218 (3) 39, 40, 48, 49

Western Ry. of Ala. vs. R. R. Com. of Ala., 197 Fed 954, (5 and 6) 973 47

Western Union Tel. Co. vs. Pennsylvania, 125 Fed. 76.... 33

Wyandotte Gas Co. vs. Kansas, 231 U. S. 622 30

Yick Wo. vs. Hopkins, 118 U. S. 356 ..... 42, 47

GEORGIA CODE SECTIONS:

	Page
2628	36
2629	36
2630	43
2662	43
6389	9, 15
6463	35
6464	9, 15, 35
6467	9, 15, 35
6563	9, 15, 25
Fletcher on Corporations, Sec. 1777, p. 2130	51
Fletcher on Corporations, Sec. 826, p. 1794	51
Fletcher on Corporations, Sec. 4425, p. 7718	51

IN THE
SUPREME COURT OF THE UNITED STATES

GEORGIA RAILWAY & POWER COMPANY,
GEORGIA RAILWAY & ELECTRIC COMPANY,
J. D. Malsby, J. R. Hardin, F. McDonald, Jr.,
C. M. Binder, J. C. Gorman, A. L. Curtis,
J. E. Phillips, J. H. Glenn, P. L. Provabo,
H. L. Gloer, F. D. Hadley, B. T. Simpson,
J. L. Murphy, D. N. Baldwin, C. E. Bennett,
W. E. Flowers, H. L. Willis, T. F. Johnson,
W. E. Field, R. L. Walker, C. C. Barfield,
M. W. Hawn, P. E. Davis and C. Roessler,
Plaintiffs in Error
and
Petitioners in Certiorari,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK,
Defendant in Error
and
Respondent in Certiorari.

No. 464

October Term 1922

STATEMENT OF CASE.

The Mayor and General Council of the City of College Park (herein called the municipality) brought an equitable petition against the Georgia Railway & Power Company (herein called the power company) individually, and as lessor of the Georgia Railway & Electric Company (herein called the electric company).

This case was based upon claimed contract which plaintiff contends fixes a 5 cents rate of fare; and that said claimed contract, together with subsequent orders of the Railroad Commission of Georgia, requires the operating street railway company to transport passengers boarding or alighting from cars within the **present** limits of the City of College

Park to and from Atlanta, with the right of transfers whereby such passengers may ride over all the lines of the street railway for a 5 cents fare; although, under the rates fixed by the Georgia Railroad Commission all other passengers are required to pay a fare of 7 cents, (except passengers on the main Decatur line, discussed in case No. 463).

THE ALLEGATIONS OF THE AMENDED PETITION.

On November 6th, 1905, the municipality granted to the electric company, its successors and assigns, "the right..... to convert its present single track ..... within the limits of College Park into a double track line of electric railway". Section 2 of this ordinance provided "That no greater fare than that of 5 cents for each passenger be charged for passage from the southern limits of said City of College Park to some central point in the City of Atlanta". (Record p. 53-54.)

This provision was alleged to be a valid binding contract, fixing perpetually 5 cents fare, made operative by the order of the Railroad Commission of Georgia from Atlanta to College Park, as well as from the southern limits of College Park to some central point in the City of Atlanta. Said order of the Commission was as follows: "All rates effective in this State ..... shall apply in either direction, over the same line between the same points". (Record p. 150, par 50. Record p. 152, Exhibit 1.)

Prior to 1918 the electric company, and thereafter the power company, charged a 5 cents fare, together with transfers without additional cost, over all its lines. (Record p. 45.)

In 1918 the power company made application to the Railroad Commission of Georgia to be permitted a charge of 6

cents fare, with 2 cents for transfers. On August 14th, 1918, the said Commission held that it lacked jurisdiction to grant the relief asked; that the Georgia Act of 1907, which put street railroads under the jurisdiction of the Commission, was limited by the following proviso:

> "Provided, however, that nothing herein shall be construed to impair any valid, subsisting contract now in existence between any municipality and any such company, and provided that this act shall not operate as a repeal of any existing municipal ordinance."

(Record page 179:)

The Commission, in construing this proviso, held:

> "The physical existence of a contact in 1907 between the Town of Decatur and the lessor of applicant, prescribing a 5 cents maximum fare between Decatur and Atlanta is admitted. A similar contract between College Park and applicant's lessor was in existence. . . . ."
>
> The question as to whether the contracts physically existent were or are valid contracts is not for us to decide. . . . ."
>
> Our view is that when in dealing or considering dealing with the rates of a street railroad, under the terms of the Act of 1907, we come face to face with a contract or an ordinance, in existence on August 23rd, 1907, still subsisting, we are estopped until such obstacle is removed in a legal procedure before a court of competent jurisdiction, or the General Assembly further acts."

(Record p. 179-180:)

In this same order the Commission held that in its opinion the applicant was entitled to an increase in its street car

fares, and that a fare of 6 cents would be reasonable and just, and made this recommendation to the City authorities:

> "This Commission believes that applicant is entitled to an increase in its street car fares, and that a 6 cents fare would be reasonable and just, so long as existing abnormal war conditions prevail, and the justice of granting such increases by amendment to existing contracts and ordinances, is earnestly urged upon the Councilmanic authorities of Atlanta, Decatur, and College Park, with the assurance on the part of this Commission that simultaneously with the effective date of such amendment, similar provisions will be made by it as to fares in territory not included in the municipalties mentioned."

(Record page 181:)

On the 23rd of August, 1918, the power company brought mandamus against the Railroad Commission, and the individual commissioners, to assume jurisdiction under the Act of 1907, and fix fares under the pending application. The Supreme Court (149 Ga. 1) overruled the Commission, holding that the Commission, except as to College Park and one Decatur line, had jurisdiction to fix the fares of the power company, holding that the College Park and the Decatur line were protected by contracts falling within the proviso of said Act.

Subsequent to said decision, on April 2nd, 1919, the Commission fixed for the power company a fare of 6 cents, except where fares were protected by contract with the City of Decatur and College Park. (Record p. 56, Exhibit D.)

On April 15th, 1919, the power company applied to the Commission for a discontinuance of free transfers to College Park passengers, contending that the claimed contract did

not provide for free transfers, and that to do so was unjust and discriminatory and added to the burdens of the claimed contract. The petition was denied, and the power company required to continue free transfers to College Park patrons. (Record p. 46-47, par. 18.)

Subsequent thereto (September 22nd, 1920) the Commission fixed 7 cents fare, except as prohibited by contracts with Decatur and College Park. (Record p. 47, par 19.)

On October 5th, 1920, both the electric and power company notified the municipality in writing, denying the validity of said claimed contract, and specifically notified it that on and after October 20th, 1920, the fare provision of the ordinance of November 6th, 1906, would be terminated. (Record p. 47, par. 20; p. 57, Exhibit E.)

This notice caused the present suit, praying that both the electric and power company be perpetually enjoined (a) in charging a higher fare than 5 cents from any part of College Park to Atlanta, and also from Atlanta to College Park; (b) from discontinuing giving free transfers with the 5 cents fare; (c) from changing the quality and quantity of the service ordered by the Commission (Record p. 50-52); (d) from violating any of the orders and rules of the Railroad Commission as set out in the petition as amended.

(Record p. 151.)

ANSWERS AND CROSS BILLS

of

ELECTRIC AND POWER COMPANIES

and of

NUMEROUS INDIVIDUAL PATRONS OF THE STREET RAILWAY COMPANIES.

Both the electric company and the power company filed original and amended answers and cross bills. (Record p. 128-150 and 195-200.)

Approximately 50 street car patrons (herein called intervenors) living on and daily using the College Park line between the northern boundary of College Park and the City of Atlanta, were made by the Court's order defendants in said case, and filed answers and cross bills, wherein they adopted the allegations of the answers and cross bills of the railway companies.

These answers and cross bills alleged substantially as follows:

The power company, with 212 miles of single track, 157 miles of which is within the City of Atlanta, furnishes railway transportation to Atlanta and its vicinity.

The College Park line runs from Atlanta to College Park, beginning in Atlanta, at the corner of Broad and Alabama Streets, thence over various Atlanta Streets to the corporate limits of Atlanta, 4.576 miles, thence along the streets of the town of East Point (a separate municipality), thence along a public road of Fulton County 2.474 miles, to present northern limits of College Park, 7.309 from the starting point, thence along the streets of College Park 1.173 miles, making a total length of 8.48 miles, only 1.73 miles being located within the present limits of College Park.

At the time of the mandamus decision supra (149 Ga. 1) the power company charged over all its lines the uniform rate of 5 cents, with free transfers. Subsequently, and under the order of the Commission of April 2nd, 1919, that company charged a 6 cents fare until the Commission's order of September 22nd, 1920, when thereafter it charged a 7 cents fare, save to College Park traffic and Decatur traffic riding on main Decatur line. (Record 149, Exhibit A.)

Thus the State of Georgia, through its Railroad Commission, fixed a rate of 7 cents for all passengers on the College Park line, except as to passengers boarding or leaving the car within the limits of College Park a 5 cents fare was permitted.

The Commission, discussing the College Park 5 cents fare in its order of September 22nd, 1920, said:

> "The 5 cents fare now in effect on the Main Decatur and College Park lines, contracted for under vastly different conditions than now exist, are not fairly compensatory, and as to the patrons of the company on other routes, and on intermediate territory on these routes are discriminatory. The Commission is without authority to increase them."

(Record page 149, Exhibit A:)

Thereafter both the electric and power company, on the 5th of October, 1920, served the municipality with the following written notice:

> "TO THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK AND THE CITY OF COLLEGE PARK:
>
> You are hereby notified that on and after the 20th day of October, 1920, the fare to and from and between

Atlanta and College Park, on the line operated by the Georgia Railway & Power Company, will be at the rate of seven (7) cents.

Denying the validity or legality of any so-called contract provision limiting the fare to five (5) cents from the southern limits of the City of College Park to some central point in the City of Atlanta, set out in the ordinance of the Mayor and Council of the City of College Park of November 6, 1905, you are notified that if the provision with reference to fare was binding at any time, it is not now binding or legal and is hereby terminated from and after the above named date.

This 5th day of October, 1920."

(Record p. 57, Exhibit E:)

To permit College Park patrons, by virtue of the continuance of the rate ordinance of November 6th, 1905, to pay only a 5 cents fare over the whole railway system, while other patrons, by the action of the State, are required to pay 7 cents, would be unjust and discriminatory against all other municipalities, and all individual patrons, except the patrons from College Park, and would force the power company to violate the State Constitution against discrimination.

The effect of this College Park 5 cents fare, and 7 cents fare all elsewhere, is to establish on the same line, on the same cars, two separate and distinct fares, the smaller fare being charged for the longer haul and the greater service, and the larger fare for the shorter haul and less service.

Two such rates of fare over the same line, affecting the whole power railroad system, as to other municipalities, the intervenors and all other passengers, save only the College

Park patrons, violates the fourteenth amendment of the Constitution of the United States, in that it denies to them the equal protection of the laws as therein guaranteed.

As against the existence and validity of the 5 cents fare both the railway companies and the intervenors contended:

FIRST.

(a) Neither the municipality, nor the railway companies have power to make binding fare contracts;

(b) Said parties are prohibited from making contracts for fixed fares, irrevocable and unlimited as to time, under the Constitution of the State of Georgia, as set out in Sections 6389, 6464, 6467 and 6563 of the Code of 1914.

SECOND.

If said fare provision had ever been a contract it had been terminated prior to the present suit.

(a) By the complete performance;

(b) By adequate notice of its termination;

(c) By action of the State of Georgia, through the Commission, rendering compliance with said 5 cents fare discriminatory and confiscatory; (1) by requiring the giving of free transfers; and (2) by increasing the quality and quantity of the service over and above that provided for in the claimed contract;

(d) By Legislative Act of the State of Georgia (Georgia laws 1906, page 650) extending the territorial limits of the 5 cents fare provision, by extension of the corporate limits of College Park.

If said Act of the State of Georgia, and said orders of the Railroad Commission (c, d supra) are legally valid, they, themselves, terminated the claimed fare provision of November 6th, 1905, or justified its termination by the railway companies, or required the Court to declare it terminated in the present procedings.

As a result of said Act and orders, the cost of College Park traffic was 13.957 cents per passenger (without regard to any return upon its property), and the compliance therewith made the 5 cents fare discriminatory, confiscatory, and violative of the fourteenth amendment of the Constitution of the United States.

If said fare provision is still a subsisting, valid and binding contract, then various legislative acts and acts of the State of Georgia, through its Railroad Commission, are illegal and unconstitutional, violating Article 1, Section 10, of the Constitution of the United States, in that said State Actions impaired the obligation of said contract by placing increased burdens upon the railway companies, not provided for and set out in said contracts.

The actions of the State thus attacked were as follows:

(a) The order of the Railroad Commission as follows:

> "All rates effective in this State, except in cases otherwise specified, shall apply in either direction over the same line, betwen the same points."

The claimed contract applied to passengers en route from the southern limits of College Park to some central point in the City of Atlanta.

By said Commission's order claimed contract was enlarged so as to include passengers from Atlanta to College

Park, and all parts of College Park to the City of Atlanta (Record p. 152, Exhibit I, p. 150-152).

(b) The orders of the Railroad Commission adding free transfers to the 5 cents fare provision, thereby increasing the obligation of the contract. (Record p. 56, 46, par. 18.)

(c) The order of the Railroad Commission of September 22nd, 1920, requiring an increase in quality and quantity of service to College Park patrons over and above that provided for in the contract. (Record p. 149, Exhibit A.)

(d) The Act of the Assembly of Georgia of 1906, page 650, extending northward the incorporate limits of the City of College Park, if construed by the Courts as increasing the territory in which said 5 cents fare was effective.

Prior to the passage of said Act the railways had, under contract with the County of Fulton, constructed a part of its line from College Park to Atlanta upon the then public road of the County, without any contract as to fares. Upon the passage of said Act said public road became a part of the streets of College Park, and if the 5 cents fare was extended by the Court's construction of the Act to include that part of the line theretofore built under contract with the County of Fulton, the said Act thereby impaired the obligation of that contract, contrary to Article 1, Section 10, of the Constitution of the United States.

The Legislative Act of 1907, page 73 et seq., amended by the Acts of 1919 (Georgia laws 1919, page 94) as construed and enforced by the highest State Court, renders said Act unconstitutional and in violation of the fourteenth amendment of the Constitution of the United States, for as so construed said Act permitted the Railroad Commission to change all contract rate of fares between street railroad companies and private parties whenever made, all contract

rates between street railway companies and municipalities subsequent to 1907, all fare contracts between street railway companies and municipalities prior or subsequent to 1907 where the street railway company has its principal office and operates lines of railroads in Counties having a population of not less than 75,000 or more than 125,000, excluding only from the jurisdiction of the Commission rate contracts with municipalities in Counties having a population under 75,000 or over 125,000, of date prior to August 23rd, 1907.

The said Acts and amendments so construed fixed a discriminatory, illegal, and an unreasonable classified scheme of rates, and deny the street railroad companies, its individual patrons, and the municipalities of Georgia the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States.

If the orders of the Commission above referred to are held by the Court to be valid and legal, then the Act of August 23rd, 1907 (Acts of 1907, page 73, et seq.), as thus construed and enforced empowers the Commission, as to College Park traffic, to render its cost confiscatory, while withholding from the Commission the power to fix reasonable rates therefor, thereby confiscating property of street railroad company, and denying it the equal protection of the law guaranted by the Fourtenth Amendment of the Constitution of the United States.

The cost of operating a line within the present limits of College Park amounted to 13.957 cents per passenger, said amount being now and for all future times confiscatory, not paying half of the operating expenses, without any return for the service rendered.

To compel such operation is in violation of the Fourteenth Amendment of the Constitution of the United States in that

it confiscates the property of the street railway companies and denies them the equal protection of the law.

The railroad companies asked for a decree, if the claimed rate provision was still in force and effect, permitting them to terminate all rights under the ordinance of November 6th, 1905, and that they be permitted to cease all operation of the street railway lines within the limits of College Park, and in connection therewith the intevenors contended that if the deficiency in the College Park fares be indirectly transferred to them by the Commission, increasing the fare they must pay, then they would be deprived of their property in violation of the Fourteenth Amendment of the Constitution of the United States. The prayers in answers and cross bills were in accordance with allegations thereunder.

RULINGS OF THE COURT.

The Superior Court of Fulton County granted the municipalities a temporary restraining order, it was affirmed by the Supreme Court on writ of error. (Records p. 13-17) (152 Ga. 143-148.)

Thereafter the Judge of the Court, on general demurrer, struck the amended answers and cross bills of both the railway companies and the intevenors (Record p. 204), and then directed a verdict for and rendered final decree in favor of the municipality, granting all the prayers of the petition, and permanently enjoining the railway companies as prayed for in the petition as amended. (Record p. 204.)

These judgments on the demurrer, direction of the verdict, and the granting of the decree were by writ of error appealed to the Supreme Court of Georgia, and there affirmed. (Record 18-21, and 24-43) (153 Ga. 329-335).

EFFECT OF JUDGMENT ON DEMURRER AND DECREE.

The effect of the judgment sustaining the demurrer, directing a verdict and rendering a decree was: (a) to hold the 5 cents fare contract still in force; (b) extend its operation to that part of the line subsequently taken into the present territorial limits of College Park; (c) to uphold and compel performance of the subsequent Legislative Acts and orders of the Commission, as against the attacks made upon them in the answers and cross bills as amended; (d) to deny the railway companies the right to terminate the claimed fare contract, or the right to discontinue the operation of their lines within College Park.

JUDGMENT SUSTAINING GENERAL DEMURRER TO ANSWERS AND CROSS BILLS.

The various rulings, judgments and decrees of the State Court are brought to this Court for review, both by writ of error and petition for certiorari. The granting of the general demurrer to the answers and cross bills as amended is an admission of the truthfulness of all the facts therein set out.

SPECIFICATION OF ERRORS RAISED AND RELIED UPON.

The assignments of error brought to this Court for review are:

(1) Under the undisputed facts in the case, forced compliance with the ordinance of the Mayor and Council of the City of College Park of November 6, 1905, to-wit:

> "That no greater fare than that of five cents for each passenger be charged for passage from the southern

limits of the City of College Park to some central point in the City of Atlanta,"

confiscates the property of the Georgia Railway & Electric Company and the Georgia Railway & Power Co.

(a) The State Court erred in not holding said provision unconstitutional as violative of the Fourteenth Amendment to the Constitution of the United States.

(b) The State Court erred in holding that said provision constituted a contract between the Mayor and Council of the City of College Park and the Georgia Railway & Electric Company and the Georgia Railway & Power Company, because: (1) Neither of said parties had any right, power or authority to make binding contracts as to fares; (2) said parties are prohibited from making contracts for fixed fares irrevocable and unlimited as to time, by the Constitution of the State of Georgia as set out in Sections 6389, 6464, 6467 and 6563 of the Code of 1914 of said State.

(c) Said State Court erred in not holding that if said provision was ever a contract; (1) it had ended prior to the pending suit; (a) by complete performance; (b) by adequate notice of its termination; (c) by the action of the State of Georgia, through the Commission, by which further forced compliance with said five cents fare rate provision was rendered discriminatory and, therefore, illegal and confiscatory; (d) by the action of the State of Georgia, through orders of the Railroad Commission, requiring the giving of transfers on payment of said five cents fare (thus entitling College Park passengers to ride over the entire street railway system for five cents, while other passengers, on the same line and for less identical character of service, are required to pay seven cents), and by orders of said body increasing the quality of service over and above

that provided for in the claimed contract; (e) by the legislative acts of the State of Georgia (Georgia Acts 1906, page 650) extending the territorial extent of the said five cents fare provision by extending the corporate limits of the City of College Park.

The State Court held that all of said orders and acts of the State were and are legal, valid and binding, and forced compliance therewith. This said construction by the Court of the ordinance of November 6, 1905, together with the forced compliance by said railway companies with said orders and acts of the State aforesaid, render the rate provision of said ordinance invalid and violative of the Fourteenth Amendment of the Constitution of the United States, in that it confiscated the property of plaintiffs in error and denied to them the equal protection of the law guaranteed therein.

2. Under the undisputed facts in the case, forced compliance with said ordinance of November 6, 1905, to-wit:

"That no greater fare than that of five cents for each passenger be charged for passage from the southern limits of said City of College Park to some central point in the City of Atlanta,"

violates the Fourteenth Amendment to the Constitution of the United States as to the individual intervenors in said case, in that it denies to them and all other citizens and patrons, than those leaving or boarding the cars of the stret railway companies in the City of College Park, the equal protection of the law as therein guaranteed; for that said provision of said ordinance, and the action of the State of Georgia by and through the Railroad Commission of said State, and construction placed upon same by the State court, required the original intervenors and all other citizens, persons and patrons (except College Park patrons), to pay seven cents for the same or less service,

while College Park patrons, for a similar or greater service, are charged only five cents.

3. Because the legislative act of the State of Georgia (Acts of 1907, page 73, et seq.), as construed and enforced by the State Court, and amended by the Act of August 18, 1919 (Georgia Laws 1919, page 94),

(a) Renders said act unconstitutional and violative of the Fourtenth Amendment to the Constitution of the United States in that it denies the plaintiffs in error, individually and collectively, the equal protection of the law and fixes a discriminatory and illegal scheme of rates, in that said act places under the jurisdiction of the Railroad Commission of Georgia the right, power and authority to change rates of fare fixed in all contracts except valid, subsisting contracts in existence on August 23, 1907, between any municipality and any street railway company having its principal office and operating lines of railroad in Counties having a population of less than 75,000 and more than 125,000. There is no legal or reasonable classification with reference to the contracts excepted and those placed under said Commission's jurisdiction; and as a result of said discriminatory exception, the individual plaintiffs in error and all other patrons of the street railway companies except those boarding or alighting from cars in College Park, are required to pay seven cents fare, while those boarding or alighting from cars in College Park pay only a five cents fare.

(b) Said act of 1907 (Georgia Acts 1907, page 73, et seq.) as construed and enforced by the Court, violates the Fourteenth Amendment to the Constitution of the United States, in that the Court holds that the said act withholds from the Railroad Commission of Georgia the right, power or authority to change the five cents fare provision of said ordinance of November 6th,

1905 (as set out in assignment of error No. 1), but holds that said Act confers jurisdiction upon said Commission to increase the quality and quantity of service rendered, and empowers the said Commission to require the issuing of transfers upon payment of the fare provided for in said ordinance; and said Act thus construed and enforced, confiscates the property of the Georgia Railway & Electric Company and the Georgia Railway & Power Company without due process of law, and denies them the equal protection of the law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

(c) Said Act of 1907 (Acts 1907, page 73 et seq.), as construed and enforced by the Court against the individual intervenors, plaintiffs in error, fixes an illegal and discriminatory scheme of rates, in violation of the Fourteenth Amendment to the Constitution of the United States, in that the Court holds that under and by virtue of said Act, power and authority are conferred upon the Railroad Commission of Georgia to fix a seven cents rate of fare for less or similar service rendered to the individual intervenors and other persons and patrons similarly situated, while it maintains and keeps in force a five cents rate of fare for a greater or similar service rendered College Park patrons by the same street railway companies operating the same system and over the same lines.

(4) The State Court having held that the provisions of the ordinance of November 6, 1905, of the Mayor and Council of the City of College Park, to-wit:

"That no greater fare than that of five cents for each passenger be charged for passage from the southern limits of said City of College Park to some central point in the City of Atlanta,"

is a binding contract between the Mayor and Council

of the City of College Park and the Georgia Railway & Electric Company and the Georgia Railway & Power Company, the Court erred in not holding that the legislative act of the State of Georgia, of 1907 (Acts 1907, page 73 et seq.), as construed by the Court, violates Article 1, Section 10, of the Constitution of the United States, in that said Act as thus construed impairs the obligation of the said contract by increasing its burdens; in that the Court held that under the Act of 1907 the State Railroad Commission had the jurisdiction and power: (a) to require, and did require, the issuance of transfers on payment of the five cents contract fare, thereby entitling passengers to ride, not only to some central point in the City of Atlanta, but over the entire railway system in Atlanta and vicinity; and (b) to increase the quality and quantity of service rendered for said five cents fare. The Court erred in not holding that said Act and the orders of the Railroad Commission issued thereunder were unconstitutional and in violation of Article 1, Section 10, of the Constitution of the United States, in that they impair the obligation of the contract upheld by the Court.

(5) Under the provisions of the ordinance of the Mayor and Council of the City of College Park of November 6, 1905, to-wit:

"No greater fare than that of five cents for each passenger be charged for passage from the southern limits of said City of College Park to some central point in the City of Atlanta,"

held by the State Court to be a contract, a five cents rate of fare is provided for only "from the southern limits of said City of College Park to some central point in the City of Atlanta". The Court held that the legislative act of the State of Georgia (Acts 1907, page 73 et seq.), and the orders of the Commission under and by virtue of the said Act, made said five cents fare pro-

vision operative from other points in the City of College Park to other points in the City of Atlanta, and from Atlanta to College Park. Such construction placed upon said Act and orders impairs the obligations of said contract, in violation of Article 1, Section 10, of the Constitution of the United States, in that it places increased burdens upon plaintiffs in error, not provided for and set out in said contract, and the Court erred in not holding said Acts and orders unconstitutional.

(6) Because the State Court, having held that the fare provisions in the ordinance of November 6, 1905, as set out in assignment of error No. 1, constituted a a contract, erred in not holding that the Act of the General Assembly of the State of Georgia (Acts 1906, page 650) violates Article 1, Section 10, of the Constitution of the United States.

(a)

In that it impairs the obligations of said contract, for that said Act, as construed by the Court, extended the five cents provision of said contract to territory added to the City of College Park after the execution of said contract and extended its provisions to territory not included therein at the time the contract was executed.

(b)

Because the undisputed facts show that the County of Fulton entered into a contract with the Georgia Railway & Electric Company and the Georgia Railway & Power Company, under and by virtue of which contract the tracks of said street railway companies were placed in the public roads of the County of Fulton, between the City of Atlanta and the City of College Park, and by said contract fares to be charged passengers boarding the cars therein were not limited to five

cents. The construction placed by the Court upon said legislative act of 1906 required the street railway company to charge only five cents fares to passengers boarding and alighting from the cars within said territory, and said Act, thus construed, impairs the obligations of said contract, adding additional burdens thereto, and the Court erred in not holding said Act unconstitutional, in violation of Article 1, Section 10, of the Constitution of the United States; for that under said Act and said construction there is imposed a five cents fare for passengers boarding and alighting from cars in said former County territory.

(7) The ordinance of November 6, 1905, as set out in assignment of error No. 1, and as construed by the State Court, makes said ordinance violative of the Fourteenth Amendment to the Constitution of the United States, for that it denies to plaintiffs in error the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States, for that the five cents fare provision therein contained is, by the undisputed facts, confiscatory; and to compel the Georgia Railway & Electric Company and the Georgia Railway & Power Company to continue to operate under and by virtue of the same, and denying them the right to terminate all its lines under and by virtue of said contract and to cease to operate its street railway lines within the City of College Park, and to compel said street railway companies to permanently devote their property to a public use, without any compensation therefor, and to compel them to continue public service in said territory, without reference to the value of the service rendered, thus confiscates the property of said companies.

(See Record pages 5-9.)

MAIN CONTENTION OF MUNICIPALITY.

The municipality's case was predicated upon its contention that a valid binding rate contract existed at the time of the institution of its suit. If such contention is not sustained a reversal will necessarily follow.

Central Power Co. vs. City of Kearney, 274 Fed. 253;
Knoxville Gas Co. vs. City of Knoxville, 261 Fed. 284 (6);

Raleigh & Gaston Rd. Co. vs. Swanson, 102 Ga. 754.

CONTENTIONS OF RAILWAY COMPANIES AND INTERVENORS.

The railway companies and the intervenors contend: (1) that the rate provision of the ordinance of November 6th, 1905, was not a binding contract at the time of the institution of this suit; (2) that if the rate provision of the ordinance is held a valid contract, then subsequent State statutes and orders of the Commission unconstitutionally impair the obligations of the contract in violation of Article 1, Section 10, of the Constitution of the United States, and also unconstitutionally confiscates the property of both the railway companies and the intervenors and denies to them the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States; (3) Legislative Acts conferring in certain cases jurisdiction upon the Commission and withholding it in other cases are unconstitutional and violative of the Fouteenth Amendment of the Constitution of the United States; (4) the street railways have, under the Fourteenth Amendment, the right to cease operating its street railway in College Park.

A FEDERAL QUESTION IS RAISED WHETHER OR NOT THE RATE ORDINANCE OF NOVEMBER 6, 1905, IS A CONTRACT.

If it be held that the claimed rate contract is still in existence, it is then contended that subsequent statutes of the State and orders of the Commission unconstitutionally impair the obligations of that contract in violation of Article 1, Section 10, of the Constitution of the United States.

This Court has repeatedly held that when the contract clause of the United States Constitution is invoked that it will determine for itself: (1) Is there a contract? (2) If so, what obligation arose from it? (3) Has that obligation been impaired by subsequent legislation?

> Detroit United Railway Co. vs. Michigan, 242 U. S. 238, 249;
>
> Milwaukee Electric Ry. Co. vs. Wisconsin, 252 U. S. 100, 103;
>
> Stearns vs. State of Minnesota, 179 U. S. 223, 232.

This Court determines these questions for itself for the reason that otherwise the State Courts might by their decision deprive parties of their federal constitutional rights.

> McCullough vs. Commonwealth of Va., 172 U. S. 102, 109.

Similarly when the Fourteenth Amendment of the Constitution of the United States is invoked against an ordinance confessedly discriminatory and confiscatory, and the claim is made that it is binding as a contract, determination of the question is a federal question; otherwise, the State Court in erroneously holding an ordinance or statute to be a contract might defeat the constitutional guarantee against the con-

fiscation of property, and deny to a party the equal protection of the laws.

San Antonio vs. San Antonio Pub. Service Co., 255 U. S. 547;

Southern Iowa Elec. Co. vs. Chariton, 255 U. S. 539;

Headleys, Admr., vs. San Francisco, 124 U. S. 639, 645.

In determining like questions this Court has refused to follow the State Court's construction of its own Constitution.

University vs. People, 99 U. S. 309, 323.

I.

RATE PROVISION OF ORDINANCE OF NOVEMBER 6th, 1905, NOT A CONTRACT.

This question is raised in the first assignment of error. (Records p. 5-6) Brief page 14-15.

NOT IN SUBSTANCE A CONTRACT.

The ordinance (Record p. 63-64, Exhibit B,) begins "Be it ordained by the Mayor and Council of the City of College Park". It ends "Be it further ordained; that all ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed."

Such words as to all the matters therein contained, including the rate section, indicate municipal legislation and not a municipal contract.

The Mayor and Council were not undertaking to fix a rate contract for itself. Under the Constitution of Georgia (Section 6563) it could make a contract for itself for only one year.

> Americus Ry & Lt. Co. vs. Mayor, &c, of Americus, 136 Ga. 25;
>
> City of Dawson Water Works Co., 106 Ga. 699, 726.

Such a contract would be operative only so long as neither party repudiated it.

> Knight vs. Suddeth & Crenshaw, 126 Ga. 231 (1).

The municipality replies to this case by alleging that the contract is not with or for the municipality, nor in the interest alone of the citizens of the municipality, but one made

by the municipality acting as agent for the State, and in the interest of all parties boarding or alighting from cars within the corporate limits of the municipality.

Such a regulation of fares, however, is governmental and not contractural.

> San Antonio Pub. Service Com. vs. San Antonio, 257 Fed. 467, affirmed in 255 U. S. 547;
>
> South Pasadena vs. Los Angeles, 41 Pac. 1094;
>
> Home Tel. & Tel. Co. vs. Los Angeles, 211 U. S. 265;
>
> State and County of Denver vs. Stenger, 277 Fed. 685;
>
> Georgia R. R. vs. Smith, 70 Ga. 694, 703, affirmed 128 U. S. 174, 180;
>
> Milwaukee Elec. Co. vs. Wisconsin, 238 U. S. 174.

In the case of City of Arcata vs. Green, et al., 106 Pac. 86, the Court, in passing upon municipal action claimed to be a contract, said:

> "The ordinance here does not confine its scope to any individual or number of individuals, but attempts to regulate the fares paid by the general public—all persons, wherever resident; in short, is of governmental character, and not a contract."

It is, however, conceded by the municipality that even though a contract, the State is not bound by its rate provision, but may, either by itself or by a Commission, having jurisdiction, change it at will. If this be so, then the contract provision lacks mutuality and cannot bind the street railways to this confiscatory rate.

Central Power Co. vs. City of Kearney, 274 Fed. 253 (2);

City and County of Denver vs. Stenger, 277 Fed. 865, 870;

Opelika Sewer Co. vs. City of Opelika, 280 Fed. 155, 159;

San Antonio vs. San Antonio Pub. Service Co., 255 U. S. 558.

Nor is the municipality bound by such rates.

Horkan vs. City of Moultrie, 136 Ga. 561;

Neal vs. Town of Decatur, 142 Ga. 205.

MUNICIPALITIES IN GEORGIA GIVEN NO AUTHORITY TO ENTER INTO BINDING RATE CONTRACTS.

No Legislative enactments, no constitutional provision confers upon a Georgia municipality the power to make rate contracts.

City of Atlanta vs. Old Colony Trust, 88 Fed. 859;

Horkan vs. City of Moultrie, 136 Ga. 561.

Where no such power has been expressly conferred, this Court has repeatedly held that a confiscatory rate cannot be upheld on the claim that there existed a municipal rate contract.

Home Tel. & Tel. Co. vs. Los Angeles, 211 U. S. 265;

Milwaukee Elec. Co. vs. Wisconsin, 238 U. S. 174, 180;

City of Englewood vs. Denver & A. P. Ry. Co., 248 U. S. 294;

San Antonio vs. San Antonio Pub. Service Co., 255 U. S. 547;

Southern Iowa Elec. Co. vs. Chariton, 255 U. S. 539.

GEORGIA CONSTITUTIONAL PROVISIONS PREVENT A MUNICIPALITY FROM MAKING RATE CONTRACTS.

The Constitution of Georgia prohibits the Legislature from making rate contracts. If the State cannot make rate contracts, then clearly it cannot grant such power to a municipality.

Town of Pacific Junction vs. Dyer, 19 N. W. 862, 863.

City of Mitchell vs. Board of R. R. Commissioners, 184 N. W. 246.

The Constitution of the State of Georgia, Article 1, Section 10, paragraph 2, provides: "No bill of attainder, ex post facto law, retroactive law, or law impairing the obligations of contracts, **or making irrevocable grants of special privileges or immunities, shall be passed.**"

This Court, in San Antonio vs. San Antonio Pub. Service Co., 255 U. S. 447, held that a similar constitutional provision of the State of Texas prevented a municipality of that State from entering into a binding contract and enjoined a confiscatory rate, although the municipality claimed the benefit of a rate contract.

The Constitution of the State of Georgia, Article 4, Section 2, paragraph 3, provides: "The exercise of the police power of the State shall never be abridged, nor so construed as to permit coporations to conduct their business in such a manner as to infringe the equal rights of individuals, or the general well being of the State."

In O'Keefe vs. City of New Orleans, 273 Fed. 560, the Court held that a similar provision of the Louisiana Constitution prevented a City of that State from claiming a binding confiscatory rate contract.

In Opelika Sewer Company vs. City of Opelika, 280 Fed. 155, the Court held that a constitutional provision of Alabama prevented a municipality of that State from making a binding rate contact.

In the City and County of Denver vs. Stenger, 277 Fed. 965, the United States Circuit Court of Appeals held that a constitutional provision of Colorado, similar to that of Georgia, prevented a municipality from making a binding rate contract. To the same effect,

City of New Orleans vs. O'Keefe, 280 Fed. 92;

City of Mitchell vs. Board of R. R. Commissioners, 184 N. W. 246.

STREET RAILWAY COMPANIES HAVE NO POWER OR AUTHORITY TO ENTER INTO BINDING RATE CONTRACTS.

Public utilities are incorporated for the purpose of serving the public impartially equally without preference, and without discrimination, and therefore cannot enforce a claimed rate contract which prevents it from fulfilling the very purpose of its incorporation.

Thomas vs. United States, 101 U. S. 74 (4).

Article 4, Section 2, paragraph 1, of the Constitution of the State of Georgia provides: "The power and authority of regulating railroad freights and passenger tariffs, preventing unjust discriminations, and requiring **reasonable** and

just rates of freight and passenger tariffs are hereby conferred upon the General Assembly."

This power (to fix rates) is reserved by the Constitution to the State.

> Georgia Railway & Power Company vs. Town of Decatur, 152 Ga. 143, 146.

In Wyndotte Gas Co. vs. Kansas, 231 U. S. 622, the Court held that the statute giving a municipality the right to contract for reasonable and just rates prevented the enforcement of a rate when it became too high. Since the power was to make reasonable and just rates, the parties were unable to contract for unreasonable rates.

Similarly, the Georgia constitutional provision, supra, "preventing unjust discrimination, and requiring reasonable and just rates ..... passenger tariff" has the same effect. The municipality can no more enforce the discriminatory and confiscatory rate in the case at bar, than could the gas company in the Wyndotte case.

If the street railway and municipality each had express power to make rate contracts, this Georgia constitutional provision would have prevented the enforcement of an unjust, unreasonable and discriminatory rate.

This question cannot be better expressed than by paraphrasing the language of this Court on page 630 (231 U. S.). In the face of such a plain manifestation of the constitutional will, it would be a departure from the obvious intention of the purpose of the lawmaker to hold that the Constitution permitted the Legislature to confer the power to do that which the text makes it apparent there was a dominant and fixed purpose of the Constitution to forbid.

See also:

Tampa Water Works Co. vs. Tampa, 199 U. S. 241, 242;

State vs. St. Louis S. W. Ry. Co., 197 S. W. 1006

The Georgia Constitution, Article 4, Section 2, paragraph 2, is as follows:

"The exercise of the police power of the State shall never be abridged, nor so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals, or the general well being of the State."

This provision also prevents the railway company from making a binding rate contract.

City and County of Denver vs. Stenger, 277 Fed. 865;

Opelika Sewer Co. vs. City of Opelika, 280 Fed. 155;

O'Keefe vs. City of New Orleans, 273 Fed. 560, affirmed 280 Fed. 92.

CLAIMED RATE PROVISION TERMINATED PRIOR TO INSTITUTION OF PRESENT SUIT.

(a) By adequate notice of its termination.

Where there is no constitutional inhibition, a State may by express language grant a municipality the power to make rate contracts for a limited time, not too long extended.

Home Tel. & Tel. Co. vs. Los Angeles, 211 U. S. 265.

This Court has in no instance upheld City-made rate contracts of indefinite duration or unreasonably extended.

By State action the claimed contract had become not only confiscatory but discriminatory, the continuance of which

"necessarily would have engendered the enforcement of two rates of fare over the same line leading to consequences dangerous to public interest, peace and tranquillity, the extent of which it would be difficult in advance to perceive."

City of Cleveland vs. Cleveland City Railway Co., 194 U. S. 517, 531.

Following the declaration of the Railroad Commission that the College Park rate was confiscatory and discriminatory, and beyond its power to change, the railway companies on October 5th, 1920, gave notice that the claimed rate would be terminated on the 20th of October, 1920 (Record p. 57, Exhibit E), thus terminating the rate.

Bearden Merc. Co. vs. Madison Oil Co., 128 Ga. 703;

Risley vs. City of Utica, 179 Fed. 875 (4), 885.

RATE CONTRACTS INDEFINITE AS TO DURATION TERMINABLE UPON REASONABLE NOTICE.

The rate provision of November 6th, 1905, was indefinite as to duration and therefore terminable upon notice.

In the case of Texas Railway Company vs. City of Marshall, 136 U. S. 393, the City of Marshall gave the railroad company $300,000.00 in county bonds, and 66 acres of land in the city limits, in consideration that the company would permanently establish its western terminus, and maintain therein its machine shops and car works; this Court held that the contract was **performed** when the company had complied with it for a period of eight years, and until its interest and the public demand required the removal of the terminus and machine shops to some other place.

In the case of Jones vs. Newport News & M. Co., 66 Fed. 736, 741 (2), Chief Justice Taft, dealing with the contract to maintain a switch, said:

> "The petition makes no better case for the plaintiff on the theory of a contract than on a common law liability. It is not alleged that either the defendant or its predecessor agreed to keep the switch in the main line for any definite length of time, or that either expressly agreed to keep it there forever. The plaintiff contends that, nothing having been said as to the time, the implication is that the switch is to be maintained at all times, i.e., forever. Such a construction is quite at variance with the views of the Supreme Court as expressed in Texas & P. Ry. Co. vs. City of Marshall, 136 U. S. 393."

See also

Risley vs. City of Utica, 179 Fed. 873 (4), 885;

Western Union Tel. Co. vs. Pennsylvania, 125 Fed. 76;

Texas Ry. Co. vs. Scott, 77 Fed. 726 (2);

McCullough-Dalzell Crucible Co. vs. Philadelphia, 72 Atl. 633.

RATE PROVISION TERMINATED BY ACTION OF THE STATE.

The rate in question was terminated by the Act of the State, though its commission, by making further compliance with the 5 cents fare discriminatory and illegal.

The orders of the Commission increasing the fare to 6 and then to 7 cents were equivalent to an Act of the Legislature making such increases.

Arkadelphia Milling Co. vs. St. Louis S. W. R. Co., 249 U. S. 134;

Oklahoma Operating Co. vs. Lane, 252 U. S. 331, 335.

These Acts of the State made the 5 cents College Park fare unjustly discriminatory, for it permitted the College Park traffic to ride for 5 cents while other passengers using the same cars, riding a less distance, are charged 7 cents.

City of Cleveland vs. Cleveland City Ry. Co. 194 U. S. 517;

State Ex Rel vs. Omaha C. B. & C. R. Co., 52 L. R. A. 315.

The Commission of Georgia expressly held, thereby establishing the fact (which is also admitted by demurrer), that the College Park rate was unjustly discriminatory

Manufacturers Co vs. United States, 246 U. S. 457, 481, 482.

That the Commission had no power itself to correct such discrimination did not in any way effect the discriminatory and illegal character of the rate.

Houston E. & W. T. R. Co. vs. United States, 234 U. S. 342.

When a rate contract becomes unjustly discriminatory, because of other rates fixed by State action, the discriminatory rate contract cannot be used either as a sword for offense, or a shield of defense, for it then comes under the ban of the common law.

Postal Cable Tel. Co. vs. Cumberland Tel. & Tel. Co., 177 Fed. 726, 728, and Georgia constitutional and legislative povisions.

FORBIDDEN BY THE CONTITUTION OF THE STATE OF GEORGIA.

In the Constitution of the State of Georgia the following provisions appear:

Sec. 6463: "The power and authority of regulating railroad freights and passenger tariffs, preventing unjust discriminations, and requiring reasonable and just rates of freight and passenger tariffs are hereby conferred upon the General Assembly, whose duty it shall be to pass laws, from time to time, to regulate freight and passenger tariffs, to prohibit unjust discriminations on the various railroads of this State, and to prohibit said roads from charging other than just and reasonable rates, and enforce the same by adequate penalties."

Sec. 6464: " . . . . . the exercise of the police power of the State shall never be abridged, nor so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals, or the general well being of the State."

Sec. 6467: "No railroad company shall give or pay any rebate, or bonus in the nature thereof, directly or indirectly, or do any act to mislead or deceive the public as to the real rates charged or received for freights or passage; and any such payments shall be illegal and void; and these prohibitions shall be enforced by suitable penalties."

These constitutional provisions in and of themselves render discriminatory rate contracts illegal and unenforceable.

Rhode Island vs. Palmer, 253 U. S. 250, 386, 387 (6, 7);

Tampa Water Works Co. vs. Tampa, 199 U. S. 241;

State vs. St. Louis S. W. Rwy. Co. of Texas, 197 S. W. 1006;

California Adjustment Co. vs. Southern Pac. Co., 266 Fed. 349;

Hurley vs. Big Sandy, Etc., R. Co., 137 Ky. 216;

Gandolfo vs. Hartman, 49 Fed. 181;

Altenberg vs. Grant, 85 Fed. 345.

FORBIDDEN BY THE STATUTE LAW OF GEORGIA.

Code Sections 2628 and 2629 are as follows:

"If any railroad corporation organized or doing business in this State under any act of incorporation or general law of this State now in force or which may hereafter be enacted, or any railroad corporation organized or which may hereafter be organized under the laws of any other State, and doing business in this State, shall charge, collect, demand, or receive more than a fair and reasonable rate of toll or compensation for the transportation of passengers or freight of any description, or for the use and transportation of any railroad car upon its track, or any of its branches thereof, or upon any railroad within this State which it has the right, license, or permission to use, operate, or control, the same shall be deemed guilty of extortion, and, upon conviction thereof, shall be dealt with as hereinafter provided."

"If any railroad corporation as aforesaid shall make any unjust discrimination in the rate or charges of toll or any compensation for the transportation of passengers or freights of any description, or for the use of transportation of any railroad car upon its said road, or upon any of the branches thereof, or upon any rail-

road connected therewith, which it has the right, license or permission to operate, or use within this State, the same shall be deemed guilty of having violated the provisions of this article, and, upon conviction thereof, shall be dealt with as hereinafter provided."

Under these statutes and the Constitution of the State, the College Park 5 cents fare is none the less discriminatory because fixed by a claimed contract.

Portland Railway, Light & Power Co. vs. R. R. Com. of Oregon, 229 U. S. 397, 414.

The Commission had been given no power or authority to remove this discrimination, but the fact of unjust discrimination being established, the Courts have jurisdiction to end it.

Houston East & West Ry. Co. vs. United States, 234 U. S. 342;

American Railway Express Co. vs. South Dakota, 244 U. S. 617;

Tift et al. vs. Southern Ry. Co. et al., 123 Fed. 789 (5).

The Court can remove the discrimination by raising College Park rates to that fixed by the Commission.

American Express Co. vs. South Dakota, 244 U. S. 617.

A RATE NON-DISCRIMINATORY WHEN EXECUTED MAY SUBSEQUENTLY BECOME AN ILLEGAL AND DISCRIMINATORY RATE.

It is not enough that the rates were claimed to be non-discriminatory on the 6th of November, 1905. A rate contract, valid when made, may become illegal.

Armour Packing Co. vs. United States, 209 U. S. 56;

Louisville & Nashville R. R. Co. vs. Mottley, 219 U. S. 467, see page 484;

Elliott Machine Co. vs. Center, 227 Fed. 124, 126;

Leonard vs. American Life & Annuity Co., 138 Ga. 274, 276.

When the State of Georgia fixed rates elsewhere which rendered the College Park rate discriminatory, the ordinance of November 6th, 1905, having become discriminatory and confiscatory by State action was unenforceable as a valid rate contract.

Leonard vs. American Life & Annuity Co., 139 Ga. 274, 276;

Raymond Lumber Company vs. Raymond L. & W. C., L. R. A. 1917 C, page 574;

McLendon vs. City of LaGrange, 107 Ga. 357.

RATE CONTRACT TERMINATED BY STATE ACTION MAKING RATE CONFISCATORY AS WELL AS DISCRIMINATORY.

In this discussion the various orders of the Commission are to be taken, as the Court took them below, in the demurrer, as valid.

On April 2nd, 1919 (Record page 56), and on April 15th, 1919 (Record page 46, par. 18), the Railroad Commission passed orders requiring free transfers to College Park patrons, thus enlarging and extending the College Park traffic unjust discrimination, and enabled them to ride over all the lines of the railway company for 5 cents, while other passengers are charged 7 cents merely to ride on the lines to which the College Park passengers were transferred.

The claimed contract fare provided only for a rate of 5 cents "For each passenger for passage from the southern limits of College Park to some central point in the City of Atlanta", whereas the order of the Railroad Commission made such fare operative in both directions. (Record p. 54, 150, 152, Exhibit I.)

The order of the Commission of September 22nd, 1920, increased the quality and quantity of street railway service with reference to College Park traffic. (Record p. 149.)

These orders increased the cost of serving College Park traffic to 13.957 cents per passenger, thereby making the 5 cents fare confiscatory.

Mississippi R. Co. vs. Mobile & O. R. Co., 244 U. S. 388;

Washington & P. C. Ry. Co. vs. Magruder, et al., 198 Fed. 218 (3);

Union Dry Goods Co. vs. Public Service Corp., 142 Ga. 841, 846.

The inability of the Commission to change the rate does not prevent the Court from declaring the rate unconstitutional, and in violation of the Fourteenth Amendment of the Constitution of the United States. Even if the Commission had fixed the rate the Courts can be appealed to.

Chicago Ry. Co. vs. Minnesota, 134 U. S. 418, 458;

Reagan vs. Farmers Loan & Trust Co., 154 U. S. 362;

Smyth vs. Ames, 169 U. S. 466, 526.

The Commission fixed an integral part of the rate when it required increased transportation and service.

Mississippi R. Co. vs. Mobile & O. R. Co., 244 U. S. 388;

Washington & P. C. Ry. Co. vs. Magruder et al., 198 Fed. 318 (3).

The fact that the deficiency in College Park traffic is made up by requiring other passengers to pay higher rates does not prevent the claimed contract rate, plus the transportation service required, being unconstitutional and confiscatory.

Vandalia Railroad Co. vs. Schnull, 255 U. S. 113;

N. & W. Ry. Co. vs. W. Va., 236 U. S. 605;

No. Pac Ry Co vs. North Dakota, 236 U. S. 585.

The intervenors are parties living upon the College Park line, but not in College Park. If the deficiency of the College Park service be made up by charging these intervenors a higher rate of fare their property would be confiscated.

Vandalia Railroad Co. vs. Schnull, 255 U. S. 113, 118.

RATE PROVISION TERMINATED BY LEGISLATIVE ACTS OF GEORGIA EXTENDING TERRITORIAL LIMITS.

When the claimed contract provision was passed the incorporate limits of College Park included only a small part of the College Park line. The Legislature (Georgia Laws 1906, page 650) extended the limits of College Park towards the

City of Atlanta, thereby taking in a portion of the College Park line not theretofore in the limits of the municipality. The State Court held that this Legislative Act extended the 5 cents rate to all passengers leaving or boarding cars within this added territory, thus increasing the number of passengers to be served at the confiscatory rate, and increasing the losses theretofore sustained.

On the line of reasoning adopted by the Court, the Legislature, by appropriate extension of College Park to take in all the lines of the street railway, applied to them this 5 cents confiscatory fare. The Legislative Act in question, thus being construed, increased the service to be rendered for the claimed 5 cents fare, making such rate confiscatory

II.

SECOND ASSIGNMENT OF ERROR.

In the second assignment of error (Record p. 6 (2), this brief page 16 supra) intervenors attacked further compliance with this 5 cents fare, in that it denies to them and all other patrons of the railway company (other than the College Park traffic) the equal protection of the law guaranteed by the Fourteenth Amendment of the Constitution of the United States, for that the intervenors pay 7 cents fare for less service, while the College Park patrons enjoy 5 cents fare for a greater transportation service.

The intervenors claim a separate and independent right to have this fare declared unconstitutional. The College Park patrons pay 5 cents, whereas the intervenors on the same cars, for less service, pay a Legislative fixed rate of 7 cents. The Legislature could have given the Commission jurisdiction over this 5 cents rate. Its failure to do so was a Legislative recognition of such rate.

If the Legislature had, itself, fixed a 7 cents fare on all the College Park lines, except for such passengers as embarked or disembarked in College Park, and had for them fixed a 5 cents fare, there could have been no question but that the intervenors had been denied the equal protection of the law guaranteed by the Fourteenth Amendment of the Constitution of the United States.

Cotting vs. Goddard, 183 U. S. 79;

Gulf C. & S. F. R. Co. vs. Ellis, 165 U. S. 150, 159;

Yick Wo vs. Hopkins, 118 U. S. 356;

Connally vs. Union Sewer Pipe Co., 184 U. S. 539, 556.

The intervenors were not parties to the College Park contract. The Legislative rate is binding upon them. That fact renders a municipal rate unconstitutional when attacked by them. The intervenors are not inhabitants of College Park, and the municipality cannot bind them by illegal and discriminatory contract rates.

The above discussion, under the first assignment of error, is, though not repeated, applicable here.

III.

THIRD ASSIGNMENT OF ERROR.

In section (a) of the third assignment of error (Record p. 6 and 7, also in brief page 17) the Act of the State of Georgia of 1907, pages 73 et seq., amended by the laws of 1919, page 94, as construed and enforced by the State Courts, is attacked as being violative of the Fourteenth Amendment to the Constitution of the United States, in that there is no reasonable classification with reference to contracts excepted and those placed under the Commission's jurisdiction.

The Railroad Commission of the State of Georgia was created by the Acts of 1878-79, page 125 et seq., and would have applied to street railway companies had not the Act expressly excluded them.

Savannah Railway Company vs. Williams, 117 Ga. 420.

The Acts of 1907, page 73 et seq., extended the powers of the Railroad Commission over street railways. The first part of Section 5 of this Act, now embodied in Section 2630 of the Code of Georgia, provided: "The power to determine what are just and reasonable rates and charges is vested exclusively in said Commission".

A part of Section 5 of said same Act, now Code Section 2662, provides: "The powers and duties heretofore conferred by law upon the Railroad Commission are hereby extended and enlarged, so that its authority and control shall extend to street railroads, and street railroad corporations, companies, or persons owning, leasing, or operating street railroads in this State. Provided, however, that nothing herein shall be construed to impair any valid subsisting contract now in existence between any municipality and any such company."

The Act of August 18th, 1919, page 94, amended Code Section 2662, by adding at the end thereof the following provisions, to-wit

"Provided that the above proviso, to-wit: 'that nothing herein shall be construed to impair any valid, subsisting contract now in existence between any municipality and any such company', shall not apply to any suburban and street railroad company which has its principal office and operates lines of railroads in coun-

ties having a population of not less than 75,000 and not more than 125,000 population."

In the mandamus case, and in the case at bar, the railway companies contended that the fixing of rates by the Commission would not impair the obligations of the contract, because under the decisions of this Court, the changing of a contract rate by the Commission would not impair the obligations of such contract, even though the contract had been made prior to the statute creating the Commission.

Producers Trans. Co. vs. Railroad Commission of Cal., 251 U. S. 228, 232;

City of Englewood vs. Denver S. P. Ry. Co., 248 U. S. 294.

The State Court held, however, that the claimed contract provision deprived the Commission of jurisdiction to fix rates in College Park.

Georgia Railway & Power Company vs. Railroad Commission of Georgia, 149 Ga. 1.

The fixing of the street railway fares, falling under the jurisdiction of the Railroad Commission, after that decision caused the discrimination and illegality of the College Park rate.

It is immaterial whether the Act or the proviso or exceptions to the Act was or was not considered constitutional when the Act was passed. The Act or the proviso may become unconstitutional as the result of future developments, or the method of enforcing it, or future construction of the Act by the highest State Court.

Municipal Gas Co. vs. Public Service Commission, 225 N. Y. 89, 121 N. E. 772;

Castle vs. Massa, 91 Ohio State 296, 110 N. E. 464.

Taking the State Court's construction there is no legal or reasonable classification as to the contracts excepted and those placed under the Railroad Commission's jurisdiction. Reasonable classification does not deny equal protection of the law, but one based on no adequate reason is invalid.

> Kansas City So. Ry. Co. vs. Road District, 256 U. S. 658.

The Act as thus amended, and as construed by the State Court, only excepted from the Commission's jurisdiction rate provisions as to fares made prior to 1907 by a municipality (not for itself, but for individuals) where the street railway company has its principal office and operates lines of railroad in counties having a population of less than 75,000 and more than 125,000.

It conferred jurisdiction upon the Commission to change or alter rates though fixed in any other contracts, whether made prior or subsequent to 1907. It is, therefore, evident that the Legislature did not undertake to make a classification based on the time of the execution of the contract.

It did not undertake to make a separate classification of municipal contracts for some made prior to 1907, and all made subsequent thereto are placed under the Commission's jurisdiction.

It included under the Commission's jurisdiction rate contracts made by individuals for themselves.

> Union Dry Goods Co. vs. Public Service Corporation, 142 Ga. 841, 846.

When the Act gave the Commission jurisdiction to change rates fixed in contracts made by individuals for themselves, it could not except from the Commission's jurisdiction a

similar rate contract made by a municipality for other individuals.

No legal or reasonable classification exists as to municipal rates, merely because the principal office of the street railway company may happen to be located in a county having under 75,000 or over 125,000 population, and those whose principal office is located in a county having a population between 75,000 and 125,000; the first being held as being excluded from the jurisdiction of the Commission, and the latter as included.

The Act of 1907, with its proviso, as construed by the State Court, makes no reasonable classification as to rate contracts; the Act and the orders of the Commission establish a discriminatory scheme of rates and recognizes no distinction as to the Commission's power to regulate the quality and quantity of service, whether the rate for the service is placed within or without the Commission's jurisdiction.

Lake Shore & Michigan So. Ry. Co. vs. Smith, 173 U. S. 684;

Chicago, R. I. & P. Ry. Co. vs. Ketchum, 212 Fed. 896;

Leonard vs. Am. Life & Annuity Company, 139 Ga. 274 (5), 277 (5);

Traux vs. Corrigna, 257 U. S. 312.

When the Legislature is empowered to place all rate contracts under the Commission's jurisdiction, it cannot place some and except others within the same class and relating to the same service, without rendering said Act unconstitutional and violative of the Fourtenth Amendment of the Constitution of the United States.

Cotting vs. Goddard, 183 U. S. 79;

Gulf, Colorado & Sante Fe Ry. Co. vs. Ellis, 165 U. S. 150, 165.

Connolly vs. Union Sewer Pipe Co., 184 U. S. 539, 556.

Yick Wo vs. Hopkins, 118 U. S. 356;

Louisville & N. R. Co. vs. Railroad Commission of Tenn., 19 Fed. 697;

Western Ry. of Ala. vs. Railroad Commission of Ala., 197 Fed. 954 (5 and 6), page 973.

SUB-PARAGRAPH (C) OF THE THIRD ASSIGNMENT. OF ERROR.

This assignment attacks the Act of 1907, as establishing a discriminatory scheme of rates as against the intervenors, the case supra controlling on this assignment of error.

SUB-PARAGRAPH (B) OF THE THIRD ASSIGNMENT OF ERROR.

(Record, page 7, this brief page 17 supra.) Now the State Court holds that the Act of 1907 supra withholds from the Commission any authority to change the rate of fare of November 6th, 1905, but that said Act conferred on the Commission authority to increase the quantity and quality of service rendered thereon. That under the said Act the Commission (a) can require the issuance of free transfers; (b) make the rate operative from Atlanta to College Park; (c) increase the quality and quantity of service; although it could not change the 5 cents fare. These orders of the Commission greatly increased the cost of the

College Park service, so as to make the actual cost 13.957 cents per passenger. Such orders unconstitutionally confiscate the property of the street railway companies.

Mississippi R. R. Coms. vs. Mobile R. Co., 244 U. S. 388;

Washington & P. C. Ry. Co. vs. Magruder, 198 Fed. 218 (3, 4);

Giving such construction and effect to this Act, it is unconstitutional;

Detroit Union Ry. Co. vs. Michigan 242 U. S. 238.

IV and V

FOURTH AND FIFTH ASSIGNMENTS OF ERROR.

(Record, p. 8, in this brief pages 18 and 19 supra.)

The State Court held that the rate provision of the ordinance of November 6th, 1905, was a valid and binding contract, and taken as such it suspended, during the life of the contract, all governmental powers which affect the rate of fare in question.

Home Tel. & Tel. Co. vs. Los Angeles, 211 U. S. 265.

No obligation is found in the ordinance of November 6th, 1905, requiring the giving of transfers (See record, pages 53, 54, Exhibit B).

On April 2nd, 1919, and on April 15th, 1919, the Commission ordered the issuing of universal free transfers on payment of 5 cents fare. This order, pleaded by the municipality, unconstitutionally impaired the obligations of the contract.

Detroit United Ry. Co. vs. Michigan, 248 U. S. 429, 436, 437.

The contract provided only for a 5 cents fare "From the southern limits of College Park to some central point in the City of Atlanta." An order of the Commission (Record page 150, 152, Exhibit I) makes such fare operative from other points in the City of College Park, and other points in the City of Atlanta, and from Atlanta to College Park. The order of the Commission of September 22nd, 1920, required an increase in the quantity and quality of service not provided for in the contract. (See order record page 149). Each of these orders of the Commission are violative of Article 1, Section 10, of the Constitution of the United States.

These orders of the Commission were passed under and by virtue of the Legislative Act of the State of Georgia, (Acts 1907, page 73 et. seq.).

The judgment of the court in sustaining the general demurrers to the answers and cross bills, and the refusing of the written request to charge (set out on page 33 of the record) gave effect to the said orders of the Commission, and to Act under which it was held that the Commission had jurisdiction to pass such orders.

Detroit United Ry. Co. vs. Michigan, 242 U. S. 238;

Louisiana Ry. Co. vs. Behrman, 235 U. S. 164, 170;

Mississippi Railroad Commission vs. Mobile R. Co., 244 U. S. 388;

Washington & C. Ry. Co. vs. Magruder, 198 Fed. 218, (3, 4).

VI.

SIXTH ASSIGNMENT OF ERROR.

The assignment of error here raised also attacks the Act of the State of Georgia (Acts 1906, page 650), in that said

Act unconstitutionally impairs the obligations of the contract of November 6th, 1905, and impairs the previous contract entered into between the County of Fulton and the electric company.

When the fare contract of November 6th, 1905, was entered into, only a small part of the street railway lines was situated in College Park. Giving that contract its widest construction, it only applied to that part of the line then within the corporate limits of the municipality.

The Act of 1906 (Georgia laws 1906, page 650) extended the limits of College Park due north a distance of 780 feet, taking in a portion of the street railway line theretofore built under the contract with the County of Fulton.

The action of the Court in sustaining the demurrer and in refusing to give written request to charge (page 32-33 of the Record) made applicable the 5 cents fare to this annexed territory. On the contrary, there would be a right resting under the former franchise with Fulton County to charge 7 cents to the extended territory, the same as is charged on all other portions of the line from College Park to Atlanta.

The judgment of the Court below requiring 5 cents rate of fare over this portion of the line rests under this Act extending the territory. It follows, therefore, that this Act, and the effect given to it, impairs the contract of the street railway company with the County of Fulton, and also adds to the burden of the contract of November 6th, 1905, in violation of Article 1, Section 10, of the Constitution of the United States.

Detroit United Ry. Co. vs. Michigan, 242 U. S. 238;

United States vs. Memphis, 97 U. S. 284.

It is not necessary that the State Court's decision mentioned said Act, since its decision gave effect to it.

Houston vs. Texas C. Rd. Co., 177 U. S. 66, 67.

VII.

SEVENTH ASSIGNMENT OF ERROR.

(Record page 9, page brief 21 of this record.)

In the answers and cross bills there was an express offer of surrender of all the rights and privileges granted the street railway by the municipality of College Park within its corporate limits, if the fare provision of November 6th, 1905, was held to be legal and enforceable. This 5 cents fare is confiscatory in that it deprives the street railway of a fair return on its property used in furnishing the service, and also failed to pay one-half the operating costs of furnishing said service.

It is contended that if the rate provision could not otherwise be repudiated, the street railway had the right to surrender and forfeit its privileges of operating the line within College Park. Therefore, the street railway desired to surrender all its rights within the municipality, and asked that it be allowed to cease operations thereon.

A public utility corporation has the right to surrender its franchise within a municipality.

Fletcher on Corporations, Section 1777, page 2130;
Fletcher on Corporations, Section 826, page 1794;
Fletcher on Corporations, Section 4425, page 7718.

There is no provision in the claimed contract between the railway company and College Park that the street railway company is perpetually to operate its lines in College Park. If there had been, it could have been terminated under the facts set out in the answers and cross bills.

Texas & P. Ry. Co. vs. City of Marshall, 136 U. S. 393.

The street railway company cannot be compelled to perpetually carry College Park traffic at a loss.

Vandalia R. R. Co. vs. Schnull, 255 U. S. 113;

Brooks-Scanlon Co. vs. R. R. Com. of La., 251 U. S. 291, 299;

North Pac. Ry. Co. vs. North Dakota, 236 U. S. 585;

Norfolk & Western Ry. Co. vs. West Virginia, 236 U. S. 605.

The deficiency could not be legally made up by increasing the fare to be charged other passengers of the street railway company.

Vandalia R. R. Co. vs. Schnull, 255 U. S. 113.

The Railroad Commission cannot increase the quantity and quality of College Park service, and put the cost of such service upon other patrons, or upon intevenors, for that would be compelling them to pay a higher rate for their service, and their property would be unconstitutionally confiscated.

Vandalia R. R. Co. vs. Schnull, 255 U. S. 113, 118.

Respectfully submitted,

L. Z. ROSSER,

J. PRINCE WEBSTER,

WALTER T. COLQUITT,

Attorneys for:

Plaintiffs in Error
and
Petitioners in Certiorari.

Atlanta, Ga.,

March 17, 1923.

Office Supreme Court, U. S.
FILED
APR 16 1923
WM. R. STANSBURY
CLERK

Supreme Court Of The United States

October Term 1922

No. 464

GEORGIA RAILWAY AND POWER COMPANY et al.,
Plaintiffs in Error and Petitioners in Certiorari,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, Defendants in Error and Respondents in Certiorari.

FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

Reply Brief of Plaintiffs in Error and Petitioners in Certiorari.

L. Z. ROSSER,
J. PRINCE WEBSTER,
WALTER T. COLQUITT,
Attorneys for Plaintiffs in Error and Petitioners in Certiorari.

Johnson-Dallis Co., Printers, Atlanta, Ga.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

GEORGIA RAILWAY & POWER COMPANY, ET AL.,
Plaintiffs in Error and Petitioners in Certiorari,
vs.
MAYOR AND COUNCIL OF TOWN OF COLLEGE PARK,
Defendants in Error and Respondents in Certiorari.

No. 464.

REPLY BRIEF OF PLAINTIFFS IN ERROR AND PETITIONERS IN CERTIORARI.

I.

The contention of defendant in error in its brief that the decision of the Supreme Court of Georgia, affirming the granting of an interlocutory injunction was a final adjudication, from which the writ of error should have been sued out and the contention that certain amendments to the answer thereafter made was not passed upon by the trial court are without merit both in law and in fact.

The contention that the affirmance of the interlocutory injunction was a final adjudication from which the writ of error should have been sued out cannot be taken as a motion to dismiss the bill of exceptions as there was no com-

pliance with the provision of the sixth (6) rule of this Court.

The contention itself is without merit under the Georgia practice with reference to such matters.

The judgment of the trial court granting or refusing the temporary injunction, and the affirmance of such judgment by the Supreme Court of Georgia is not a final judgment or decree in the case.

> Atlanta Trust & Banking Co. vs. Nelms, 119 Ga. 630 (1).

The only effect of such judgment is that points of law decided by the court are followed by the State Court, in the subsequent trial of the case.

> Atlanta Trust & Banking Company vs. Nelms, 119 Ga. 630 (1).

The court cannot grant a permanent injunction on an interlocutory hearing.

> Purcell vs. Pilgrim, 152 Ga. 61.
> Brown vs. Smith, 150 Ga. 112.
> Glascock County vs. Sturgis, 150 Ga. 634.

The affirmance of the interlocutory injunction by the appellate court leaves the case still standing for trial in the court below.

The demurrers in the case cannot be passed upon at an interlocutory hearing.

> Milltown Manufacturing Company vs. Bray & Co., 149 Ga. 151 (2).
>
> Mack vs. Westbrook, 148 Ga. 691.
> Bank of Soperton vs. Empire T. Co., 142 Ga. 34, 35 (2).

A final judgment or decree is not rendered until the verdict and a final decree is entered thereon.

Georgia Code 5421.

Georgia Code 5500.

Southern Cotton Oil Co. vs. Overby, 136 Ga. 69 (3).

Until the final decree the case is pending in the lower court; and, at any stage of the case, either party, plaintiff or defendant, in law or in equity, has the right to amend its pleadings either in matter of form or in substance.

Georgia Code 5681.

The right to amend is as broad in equity as at law.

Georgia Code 5408.

A defendant can set up either in his answer or by amendment thereto any matter which under the English practice should be the subject of a cross bill, technical cross bill not being required under Georgia practice.

Georgia Code 5547.

An answer may contain as many several matters as the defendant may think necessary for his defense.

Code, Section 5635.

Parts of the answer may be inconsistent with another part; and the defendant can avail himself of any and every part of the answer as a defense, conflicting parts not ousting each other.

Georgia Code 5630.

Georgia Code 5649.

The common law rule disallowing conflicting pleas or answers has been abolished by statutory law in Georgia.

Albany Phosphate Co. vs. Hugger Bros., 4 Ga. App. 771 (1).

An answer may be amended at any stage of the proceedings.

Haggerstown Steam Engine Co. vs. Guzzard, 86 Ga. 574 (2).

A sworn answer is subject to amendment at any time by leave of the Court.

Georgia Code 5639.

As a matter of right, a defendant can set up new facts or a new defense at any stage of the cause, by amending his answer, if an affidavit is attached to such amendment stating that said new defenses had not been omitted for the purpose of delay.

Georgia Code 5640.

Wynn, et al. vs. Wynn, et al., 109 Ga. 255.

Case Thrashing Machine Co. vs. Donaldson, 12 Ga. App. 121 (2).

The court can allow the amendment without requiring an affidavit.

Robertson vs. Weaver, 145 Ga. 626 (2).

When an amendment is allowed it becomes a part of the record and pleadings in the case; to be passed on by the trial court.

After the granting of the interlocutory injunction and its affirmance by the Supreme Court of Georgia, the plain-

tiff in error, filed an amendment to its answer (Record, pages 195-201). To this amendment was attached the affidavit provided for in Georgia Code Section 5640. The amendment was **also** allowed and ordered filed by the **trial court.** (Record, page 201.) This amendment brought into the case the constitutional questions, there set out; for the consideration and determination of the trial court. Defendant in error (plaintiff in the court below) demurred generally to the answer and **this amendment**. The order of the trial court shows that the court not only passed upon the original answer but upon **this amendment**, sustaining the general demurrer to the answer **as amended.** (Record, page 204.) There is therefore no merit in the contention that the constitutional questions raised by this amendment were not passed upon by the trial court. Subsequent thereto the case came on for trial before a jury; evidence was introduced and then a verdict was directed by the Court. (Record, page 204.) A final decree was thereafter entered on the verdict. (Record, page 204.) There had been no final determination of the case in the Court below until the rendition of the verdict and the decree entered thereon.

Walden vs. Walden, 124 Ga. 145 (1).

It was necessary to take this final judgment or decree to the Supreme Court of the State of Georgia before there was a final judgment or decree in the highest state court which could be brought to this Court for review.

Writs of error will only lie from this Court to review "a **final** judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had."

Federal Judicial Code, Section 237.

Missouri & K. I. R. Co. vs. Olathe, 222 U. S. 185.

As to what is a final judgment or decree,

Hazelton vs. Central Bank, 183 U. S. 130.
Chesapeake R. Co. vs. McCabe, 213 U. S. 207.
Schlosser vs. Hemphill, 198 U. S. 173.
Clark vs. Kansas City, 172 U. S. 334.

This question is decided by a recent decision of this court.
Southern Ry. Co. vs. Clift, Decision (No. 107) rendered December 4, 1922.

MANDAMUS CASE IS NOT RES ADJUDICATA.

The parties in the case at bar and in the mandamus case are not the same. The contentions made and raised in the two cases are different. That the mandamus case is not res adjudicata of the case at bar, was decided by the Supreme Court of Georgia.

In the affirmance of the interlocutory injunction,
(Georgia Railway & Power Company vs. City of College Park and Town of Decatur, 152 Ga. 143.)

the Supreme Court granted leave to review the mandamus case and did review it. The Supreme Court only grants the right to review some other case between other parties, when the judgment sought to be reviewed is **not** res adjudicata.

Southwestern Ry. Co. vs. Wright, 68 Ga. 311, 312, (7).
Georgia Penitentiary vs. Nelms, 65 Ga. 501, 502.

Respectfully submitted,

L. Z. ROSSER,

J. PRINCE WEBSTER,

WALTER T. COLQUITT,

Attorneys for Plaintiffs in Error and Petitioners in Certiorari.

Atlanta, Ga.

Office Supreme Court, U.
FILED
JUL 11 1922
WM. R. STANSBU
CLER

No. 464

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1921

GEORGIA RAILWAY & POWER COMPANY, ET AL.
Petitioners

vs.

MAYOR AND COUNCIL OF CITY OF COLLEGE PARK,
Respondent

PETITION FOR CERTIORARI
BRIEF AND MOTION

LUTHER Z. ROSSER
J. PRINCE WEBSTER
WALTER T. COLQUITT
Attorneys for Petitioners

IN THE

Supreme Court of The United States

OCTOBER TERM, 1921

GEORGIA RAILWAY & POWER CO., GEORGIA RAILWAY & ELECTRIC CO., J. D. MALSBY, J. R. HARDIN, F. McDONALD, JR., C. M. BINDER, J. C. GORMAN, A. L. CURTIS, J. E. PHILLIPS, J. H. GLENN, P. L. PROVANO, H. L. GLOER, F. W. HADLEY, B. T. SIMPSON, J. L. MURPHY, D. N. BALDWIN, C. E. BENNETT, W. E. FLOWERS, H. L. WILLIS, T. F. JOHNSON, W. E. FIELD, R. L. WALKER, C. C. BARFIELD, M. W. HAWN, P. E. DAVIS and C. ROESSLER,

Petitioners,

Vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK,

Respondents.

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

The petition of Georgia Railway & Power Company, Georgia Railway & Electric Company, J. D.

Malsby, J. R. Hardin, F. McDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Mrphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis, and C. Roessler, respectflly shows:

1.

The Mayor and Council of the City of College Park (a municipal corporation of the State of Georgia) brought an equitable petition against Georgia Railway and Power Company, individually and as lessor of Georgia Railway & Electric Company, seeking to enjoin the street railway companies from increasing fares, as to the College Park line, of passengers boarding or alighting from cars within the corporate limits of the City of College Park, from five cents per passenger to seven cents per passenger, claiming that:

(a) That all lines of street railways had been placed under the jurisdiction of the Railroad Commission by the act of the Georgia legislature of 1907, with the exception stated in the following proviso: "Provided, however, that nothing herein shall be construed to impair any valid, subsisting contract now in existence between any municipality and any such company."

(b) That on the — day of April, 1918, the Railroad Commission of Georgia declared its lack of jurisdiction to fix fares upon all of the lines of the said street railway companies, including the City of

College Park, upon the grounds that the lines of said companies fell within the proviso of the act of 1907, supra.

(c) That the said railway companies, by mandamus proceedings in the Supreme Court of Georgia, reversed this ruling of the Railroad Commission, directing them to fix fares upon all of the lines of said companies except as to that part of the College Park line included within the corporate limits of the City of College Park and that part of the North Decatur line situated within the corporate limits of the Town of Decatur. (149 Ga. 1.) This exemption was based upon the ground that the City of College Park and the Town of Decatur had contracts falling within the proviso of the act of 1907, supra.

(d) That by reason of the allegations supra (a) to (c), inclusive, the City of College Park had a valid perpetual contract by which the said street railway companies were never to charge passengers alighting from or boarding cars in College Park more than five cents per passenger.

2.

Respondents further sought to enjoin the street railway companies from discontinuing the giving of transfers to passengers boarding cars in College Park from all other lines of railway within the City of Atlanta, claiming that it had always been the custom of the railway companies to give transfers under certain conditions to passengers on their other lines, and that the Railroad Commission of Georgia had (to-wit, April 19, 1919) ordered the railway companies to continue the issuing of transfers to

patrons of the College Park line within the limits of College Park, just as they were issued to patrons on other lines of said companies.

3.

The fact that the said railway companies had notified respondents that they would increase fares to seven cents on October 10, 1920, was given as the immediate need for the injunction.

4.

The railway companies showed cause and defended by answer and demurrer, substantially as follows:

(a) The railway companies furnished the railway system for the City of Atlanta and vicinity, 157 miles of their railway being in the City of Atlanta; their full mileage being 212 miles of single track.

(b) That the College Park line begins in the City of Atlanta at Broad and Alabama streets, and runs over various streets in the city, through West End and Oakland City (formerly municipalities, but now within the City of Atlanta) 4.576 miles to the city limits; thence over the public roads of Fulton County, to and through the Town of East Point; thence along the Fulton County road 2.474 miles; thence to the northern limits of College Park; a distance from the starting point of 7.309 miles; thence along the streets of College Park 1.173 miles, the total length of the line being 8.48 miles.

(c) That prior to the 2nd day of April, 1919, and prior to the rendition of the decision in 149 Ga. 1, the said street railway companies charged a uniform

fare of five cents per passenger, with transfers upon uniform conditions.

(d) Upon said last named date the Railroad Commission of Georgia, after a full hearing, increase the rate of fare to six cents per passenger, except as to the College Park line within the limits of College Park and the North Decatur line within the limits of Decatur. After this order of the Commission a six-cents fare was charged upon all the street railway lines except those stated.

(e) On September 22, 1920, the Georgia Railroad Commission, upon further hearing, fixed a seven-cents fare on all the lines of the railway companies except as to College Park and Decatur, as above stated. In rendering this seven-cents order, the Commission said:

> "The five-cent fare now in effect on the Main Decatur and College Park lines, contracted for under vastly different conditions than now exist, are not fairly compensatory, and, as to the patrons of the company on other routes, are discriminatory. This Commission is without authority to increase them. In the same order said commission increased both the quantity and quality of service to be rendered College park traffic."

(f) That the ordinance of November 6, 1905, if valid as a contract and binding upon the railway companies, provides for a five-cents fare only from the southern limits of the City of College Park to some central point in the City of Atlanta and from no other point in the City of College Park, and from

no point in the City of Atlanta or elsewhere to any point in College Park.

(g) That if the fare provision in the ordinance of November 6, 1905, be construed as an ordinance regulating and fixing fares, or be construed as a contract for fares, it is void in either instance, because of lack of authority in the City of College Park to make such contracts or pass such ordinances, and for lack of authority in the street railway companies to make such contracts.

(h) If the rate ordinance above referred to be construed as a contract, and as valid at its inception, it was terminated by the notice given by the street railway companies; and it is discriminatory in that it discriminates in favor of all passengers boarding or alighting from cars within the City of College Park; those so boarding or alighting being charged only five cents, and all the other passengers along the College Park line being charged seven cents; and further was illegal at its inception, not only for lack of statutory authority in the parties to make the contract but as being in violation of Sections 6389, 6464 and 6467, of the Code of 1914 of the State of Georgia.

(i) If said rate ordinance is construed to be a contract, it has been revoked by the State of Georgia, through the Railroad Commission of said State, by adding to the contract the duty of giving transfers and by increasing, through the orders of said Commission, the quality and quantity of service to be performed under said claimed contract.

(j) By the act of the legislature of Georgia of

1906 (Georgia Laws 1906, page 650) the corporate limits of the City of College Park were extended towards the City of Atlanta, so as to include part of the College Park line, built under a franchise granted by the County of Fulton, and which was therefore not included in the rate ordinance of November 6, 1905.

(k) Under the Constitution of the State of Georgia, the General Assembly may not authorize the construction of any street passenger railway within the corporate limits of any town or city without the consent of the municipal authorities. The College Park line was originally constructed under the consent, or franchise, of the City of Atlanta, the Town of West End, the Town of Oakland City, the County of Fulton, the Town of East Point, and the City of College Park. In none of these original franchises was there any provision for a five-cents fare.

(l) The cost of the service to patrons boarding or alighting from cars within the corporate limits of the City of College Park is 13.956 cents per passenger, and said service is not, and never will be, within the five cents now charged.

(m) On October 5, 1920, the street railway companies notified the Mayor and Council of the City of College Park that from and after the 20th day of October, 1920, the claimed five-cents fare provision of the ordinance of November 6, 1905, would be terminated.

(n) The rate provision of the ordinance of 1905 confiscates the property of the railway companies and is, therefore, unconstitutional and violates the

Fourteenth Amendment to the Constitution of the United States, in that it deprives the street railway companies of their property without due process of law, and denies to all the patrons of said railway companies, except the College Park patrons, including the intervenors herein, the equal protection of the laws, in that the College Park patrons pay a five-cents fare and all the other patrons pay seven cents.

The legislative act of the State of Georgia (Acts 1907, page 73, et seq.), amended by the Act of August 18, 1919 (Ga. Laws 1919, page 94), is unconstitutional and violative of the Fourteenth amendment to the Constitution of the United States, in that it denies to each of the petitioners the equal protection of the laws and fixes a discriminatory and illegal scheme of rates, in that said act places under the jurisdiction of the Railroad Commission of Georgia the authority to change rates fixed in all contracts except valid, subsisting contracts in existence on August 23, 1907, between any municipality and any street railway company having its principal office and operating lines of railroad in counties having a population of more than 75,000 and less than 125,000.

It further violates the Fourteenth Amendment to the Constitution of the United States by depriving the petitioning railways of their property without due process of law, in that it deprives the Railroad Commission of the power to change rates as just above stated, and confers upon said Commission the power to increase the quality and quantity of service rendered and the power to command the issuance of transfers by said railways.

(o) The act of 1907 (Acts 1907, page 73 et seq.) violates the Fourteenth Amendment to the Constitution of the United States in that under and by virtue of said act, power and authority are conferred upon the Railroad Commission of Georgia to fix a seven-cents rate of fare for less or similar service rendered to all other persons and patrons, and a five-cents rate of fare for College Park patrons for a greater and similar service.

(p) If the rate provision of the ordinance of 1905 is a contract between the City of College Park and the street railways companies, then the act of 1907 (page 73 et seq.), when construed as permitting the Railroad Commission of Georgia to add to the contract by adding transfers and increasing the quantity and quality of service, impairs the obligations of the contract between the parties, in violation of Article 1, Section 10, of the Constitution of the United States.

(q) If the rate provision of the ordinance of 1905 be held by the Court to be a contract, then the Court should further hold that the legislative act of 1907 (Acts 1907, page 73 et seq.) and the orders of the Commission making the five-cents fare provision operative from other points in College Park to points other than a central point in the City of Atlanta, and from any point without to any point within the City of College Park, then said act and orders impair the obligations of said contract, in violation of Article 1, Section 10, of the Constitution of the United States.

(r) If the fare provision of the ordinance of 1905

constitutes a contract, and if the act of 1906 increasing the limits of College Park has thereby added to the five-cents zone, then said act of 1906 violates Article 1, Section 10, of the Constitution of the United States: (1) In that it extends the five-cents fare provision of the contract to territory added to the City of College Park after the execution of the contract. (2) In that the County of Fulton granted a franchise to the railway companies, under and by virtue of which the railway tracks were laid in the public roads of Fulton County (now included in the corporate limits of the City of College Park) under which the fares to be charged to patrons were not limited.

5.

The street railway companies prayed and requested the power to abandon so much of their line as was located in the City of College Park because the operation of said line cost more than thirteen cents per passenger, and to be compelled to continue to operate said line confiscated their property, contrary to the Fourteenth Amendment to the Constitution of the United States.

6.

The individual petitioners were allowed to intervene as parties defendant. They adopted the answers and demurrers of the street railway companies, and prayed a cessation of the discrimination against themselves, and specifically raieed the constitutional question, contending that enforced compliance with the ordinance of November 6, 1905, violated the Fourteenth Amendment to the Constitution of

the United States as to them, in that it denied them and all oher persons, except those boarding and alighting from cars within the corporate limits of College Park, the equal protection of the laws as therein guaranteed, in that they and others like situated were charged a fare of seven cents, while the College Park patrons paid only five cents.

7.

A preliminary injunction was granted in the court below, taken up by a writ of error to the Supreme Court of the State of Georgia, and the judgment of the court granting the restraining order was sustained.

8.

Thereafter final trial was had and upon motion, the trial court struck the answers and cross-bills of petitioners on general demurrer and directed a verdict in favor of the respondents, entering thereupon a decree in their favor. The effect of such decree was to sustain as legal and binding, with which compliance must be had, all the orders of the Commission and the acts of the State attacked in the answers and cross-bills; it enforced compliance with the provisions of the ordinance of November 6, 1905, with the various acts of the State and with the orders of the Commission enlarging and extending such contract by requiring the issuance of transfers and increasing the quality and quantity of the service, and by enlarging and extending the territory to which the five-cents fare provision was to apply, and denied the right of petitioning street railway companies to give up all their franchise

rights in the City of College Park and to cease further operation of their line located in College Park.

9.

Petitioners submit the following reasons why the writ of certiorari should be allowed:

(a) The ordinance of November 6, 1905, is not a rate contract. It is neither in form nor substance a contract, but is an attempted ordinance, which the City of College Park had no right to pass, seeking to regulate rates. Neither the City of College Park nor the petitioning railway companies had the statutory power to make rate contracts, and had the statutory power been given them such statutes would be void, for under the Constitution of Georgia the legislature alone can make rates. The legislature itself cannot make an irrevocable grant of special privileges of immunities. "The exercise of the police power of the State shall never be abridged, nor so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals, or the general well being of the State."

Grant that the contract was valid at its inception, it was at most a contract at will and subject to be terminated upon reasonable notice.

When the Railroad Commission increased the fares on every other part of the street railway system to six cents, it became discriminatory, and hence illegal. It is not contended that the State could not have revoked it at any time. Without dispute, the

State did so modify it that the petitioning railways were released from the contract, by the Commission's ordering the issuance of transfers, by increasing and enlarging the quality and quantity of the service to be performed under the contract, and by extending the area covered by the contract.

It is true that the Supreme Court of Georgia held that this ordinance was not a rate ordinance but a rate contract, and a valid contract. When the Fourteenth Amendment to the Constitution of the United States is appealed to, it will be determined by this Court whether the confiscatory instrument is, in fact, a contract or a rate ordinance. If this question is to be determined exclusively by the State courts, then in a large number of instances the State will for itself pass upon the Fourteenth Amendment.

(b) The enforcement of the rate ordinance of November 6, 1905, discriminates against the individual intervenors and, as to them, violates the Fourteenth Amendment to the Constitution of the United States, in that it denies to them the equal protection of the laws. They live on the College Park line between the corporate limits of the City of Atlanta and the corporate limits of the City of College Park. All of them pay a seven-cents fare, many of them for very short distances. The College Park patrons pay five cents for the longest haul on the line.

(c) The legislative act of 1907 (Acts 1907, page 73 et seq.), as amended in 1919, as construed by the court, violates the Fourteenth Amendment to the Constitution of the United States as to all of the

petitioners, in that it denies to them the equal protection of the laws and fixes a discriminatory and illegal scheme of rates. That act places under the jurisdiction of the Railroad Commission of Georgia all street railways in said State and under its terms the Railroad Commission can disregard all rate contracts in the State except valid, subsisting contracts in existence on August 23, 1907, between any municipality and any street railway company having its principal office and operating lines of railroad in counties having a population of less than 75,000 and more than 125,000. This character of contract here excepted is beyond the reach and power of the Commission, no matter how unjust or unfair to the public utility; but as to all other contracts, it may disregard them and fix such rates as to it may seem just and fair.

Under its operation, College Park citizens ride for five cents, when the service costs more than thirteen cents. Other citizens on the same line enjoy a much less service, but are charged seven cents. An act which establishes a scheme of rates permitting such inequality between patrons cannot be justified by any fair system of classification.

As construed by the court, under this act, while the Commission may not change the contract as to the rate of fare, it is here so construed by the court as to permit the Commission to change the excepted municipal contract by adding to its terms a provision for transfers and by increasing the quality and quantity of service anticipated in the terms of the contract. So construed by the court, said act violates the Fourteenth Amendment to the Consti-

tution of the United States in that it takes the property of the railway companies without due process of law.

Said act, as to the individual petitioners, fixes an illegal and discriminatory scheme of rates, in violationof the Fourteenth Amendment to the Constitution of the United States, in that the court held that under that act the Railroad Commission had the power to fix a seven-cents rate of fare for petitioners and others similarly situated, while a five-cents fare for a greater service is permitted to the College Park patrons.

If the court correctly held that the rate ordinance of 1906 was a valid contract between the parties, then the legislative act of 1907 (Acts 1907, page 73 et seq.), as construed by the court, violates Article 1, Section 10, of the Constitution of the United States. That act permits the Railroad Commission to add to the contract by demanding the issuance of transfers and by increasing the quality and quantity of service as contemplated by said act; said addition and increase being an impairment of the obligations of the said rate contract.

Since the court held that the rate ordinance of 1905 was a valid and binding contract between the parties, then said act of 1907 (Acts 1907, page 73 et seq.), as construed by the Court, violated Article 1, Section 10, of the Constitution of the United States, in that said Act permitted the Railroad Commission of Georgia to enforce a five-cents fare not only from the southern limits of the City of College Park to some central point in the City of Atlanta, but from

all points within the City of College Park to all points without the City of College Park, and from all points without the City of College Park to all points within the City of College Park.

In the year 1906, after the passage of the ordinance of November 6, 1905, the legislature enlarged the area of College Park, extending it toward the City of Atlanta, and taking in a section of the street railway line not theretofore included in the limits of College Park. The court construed that enlarging act so as to bring the new territory under the provisions of the rate ordinance of 1905. If such rate ordinance was, in fact, a rate contract, the construction of the enlarging act so as to add new territory to the provisions of that contract impaired the obligations of the contract, in violation of Article 1, Section 10, of the Constitution of the United States.

(d) The petitioning railway companies built their tracks upon the public roads of Fulton County, under a franchise contract with that County wherein there was no five-cents fare provision. When the Court so construed the enlarging act of 1906 as to apply the rate ordinance to the added territory, it so construed it as to impair the obligations of the contract between the petitioning railway companies and the County of Fulton, in violation of Article 1, Section 10, of the Constitution of the United States.

In the cross-petition, the petitioning street railway companies, setting up that the service to each College Park patron, under the rate ordinance of 1905, cost the companies more than thirteen cents, prayed that they be allowed to relinquish their fran-

chise in College Park and take up their tracks in its streets. The court, with the dismissal of the cross-bill, denied this right, holding that under the charter and the rate ordinance, they were bound to continue the College Park service, even if the result was a confiscation of their property. It is contended that, as construed by the court, the rate ordinance of 1905 is in violation of the Fourteenth Amendment to the Constitution of the United States. Under that provision of the Constitution, a corporation cannot be forced to dedicate its property to the public service to the destruction of its property.

10.

Petitioners further submit that this case is of great important to the petitioning railway companies and the individual petitioners, involving a question of confiscation of the property of the public utilities and gross discrimination against the individual petitioners.

WHEREFORE, your petitioners pray that a writ of certiorari may be issued out of and under the seal of this Court, directed to the Supreme Court of the State of Gergia, to the end that the judgment and decree of the Supreme Court of Georgia may be reviewed and reversed by this Honorable Court.

LUTHER Z. ROSSER,
J. PRINCE WEBSTER,
WALTER T. COLQUITT,
Attorneys for Petitioners.

GEORGIA,—FULTON COUNTY.

Before me personally appeared Walter T. Colquitt, who, being duly sworn, deposes and says that he is counsel for the petitioners, Georgia Railway & Power Company, Georgia Railway & Electric Company, J. D. Malsby, J. R. Hardin, F. McDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis and C. Roessler; that he knows of the proceedings had, and that the facts stated in the foregoing petition are true and correct, to the best of his knowledge and belief.

WALTER T. COLQUITT.

Sworn to and subscribed before
me this 22nd day of June, 1922.

INEZ BOINEST.

Notary Public, Fulton County, Ga.

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1921.

GEORGIA RAILWAY & POWER CO., GEORGIA RAILWAY & J. R. HARDIN, F. McDONALD, JR., C. M. BINDER, J. C. GORMAN, A. L. CURTIS, J. E. PHILLIPS, J. H. GLENN, P. L. PROVANO, H. L. GLOER, F. W. HADLEY, B. T. SIMPSON, J. L. MURPHY, D. N. BALDWIN, C. E. BENNETT, W. E. FLOWERS, H. L. WILLIS, T. F. JOHNSON, W. E. FIELD, R. L. WALKER, C. C. BARFIELD, M. W. HAWN, P. E. DAVIS and C. ROESSLER, Petitioners.	Petition for Certiorari.
Vs.	
THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, Respondents.	

TO THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, AND GEORGE P. WHITMAN, THEIR ATTORNEY OF RECORD:

This is to notify you, and each of you, that the above named Georgia Railway & Power Company, Georgia Railway & Electric Company, J. D. Malsby, J. R. Hardin, F. McDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P.

L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simp son, J. J. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. P. Jonson, W. E. Field, R. L. Walker,, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis and C. Roessler, petitioners for certiorari, will on Monday, the 17th day of July, 1922, upon their verified petition and copy of the entire record in this case, at the opening of Court on that day, or as soon thereafter as counsel can be heard, submit a motion (a copy of which and of the petition for writ of ceritorari and brief in support thereof are herewith delivered to you) to the Supreme Court of the United States in its courtroom at the Capitol in the City of Washington.

LUTHER Z. ROSSER,

J. PRINCE WEBSTER,

WALTER T. COLQUITT,

Attorneys for Petitioners.

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1921.

GEORGIA RAILWAY & POWER CO., GEORGIA RAILWAY & J. R. HARDIN, F. McDONALD, JR., C. M. BINDER, J. C. GORMAN, A. L. CURTIS, J. E. PHILLIPS, J. H. GLENN, P. L. PROVANO, H. L. GLOER, F. W. HADLEY, B. T. SIMPSON, J. L. MURPHY, D. N. BALDWIN, C. E. BENNETT, W. E. FLOWERS, H. L. WILLIS, T. F. JOHNSON, W. E. FIELD, R. L. WALKER, C. C. BARFIELD, M. W. HAWN, P. E. DAVIS and C. ROESSLER,

Petitioners,

Vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR CERTORARI.

A full statement of the case appears in the petition for certiorari.

This case is already pending in this Court on writ of error.

Under a number of decisions of this Court, had

the case arisen prior to the Act of Congress of September 16, 1916, amending Judicial Code 230 (changing the procedure in bringing certain questions to this Court from writ of error to certiorari), a writ of error would lie. The change in procedure made by this Act and subsequent decisions of this Court, leave counsel for petitioners in doubt as to which remedy should be followed; and they, therefore, respectfully request that the certiorari be sanctioned as prayed, so that the questions raised may be considered and determined by this Court.

FEDERAL QUESTIONS RAISED WHETHER OR NOT RATE PROVISON IS HELD TO BE A CONTRACT.

Whether the rate provisions of the ordinance of November 6, 1905, is held to be a binding contract, or merely a rate ordinance federal questions for judicial determination by this Court—are raised. If it is held to be a contract the constitutional question is raised that subsequent stautes of the State of Georgia and orders of the Railroad Commission of Georgia unconstitutionally impair its obligations in violation of Article 1, Section 10, of the Constitution of the United States.

If it is held to be a rate ordinance then constitutional questions are raised, that it violates the Fourteenth Amendment of the Constitution of the United States; for the 5 cents rate provision therein contained is admittedly confiscatory and discrimina-

tory; and has been expressly so held and declared by the Railroad Commission of the State of Georgia.

This is a typical case for the exercise of the jurisdiction of this Court under a long line of decisions.

When the contract clause of the United States Constitution is invoked, this Court determines for itself (1) Is there a contract? (2) If so, what obligation arose from it. (3) Has that obligation been impaired by subsequent legislation?

> Detroit United Railway Co. vs. Michigan, 242 U. S., 238, 249.
>
> Milwaukee Electric Ry. Co. vs. Wisconsin, 252 U. S., 100, 103.
>
> Stearns vs. State of Minnesota, 179 U. S., 223, 232.

This Court determines the question of whether or not there is a contract, for itself, and in deciding it may even reverse the State court's construction of the State Constitution.

> University vs. People, 99 U. S., 309, 323.

The reason for this rule, as stated by this Court, is that an erroneous decision by the State Court might defeat the federal jurisdiction and absolutely deprive a party of a constitutional right guaranteed to him by the Constitution of the United States.

Similarly, when the Fourteenth Amendment of the Constitution of the United States is invoked against

an ordinance, confessedly discriminatory and confiscatory and the claim is made that it is binding as a contract, this Court has the jurisdiction to determine for itself whether there is a contract, its meaning, validity and extent, and if held to be a mere ordinance or legislative act, whether its discriminatory or confiscatory character violates the Fourteenth Amendment of the Constitution of the United States. Otherwise, a State court (similarly as when the impairment of a contract clause of the United States Constitution is invoked) by holding an ordinance or statute to be a contract might absolutely deprive a party of the constitutional guarantee against the confiscation of his property, and the equal protection of the law.

San Antonio vs. San Antonio Pub. Service Co., 255 U. S., 547.

Southern Iowa Elec. Co. vs. Chariton, 255 U. S., 539.

As the impairment of the obligation of the contract clause of the United States (Article 1, Section 10) is invoked and questions as to the violation of the Fourteenth Amendment of the Constitution of the United States are raised, the federal question is made, as to whether or not the rate provision of the ordinance of November 6, 1905, is or is not a contract.

The determination of this question is, in and of itself, a federal question.

Headley's Administrator vs. San Francisco, 124 U. S., 639, 645.

CONTENTION THAT RATE PROVISION IS NOT A CONTRACT.

To show that under the decisions of this Court a substantial federal question is raised; that the rate ordinance of November 6, 1905, is not a contract; we briefly call attention to some of the decisions of this Court sustaining the contention of petitioners that no binding rate contract exists.

As the parties to the claimed rate contract have no explicit, express or implied constitutional or legislative authority to make binding rate contracts, the ordinance is not a contract.

Home Tel. & Tel. Co. vs. Los Angeles, 211 U. S., 265.

Milwaukee Elec. Ry. Co. vs. Wisconsin, 238 U. S., 174.

City of Englewood vs. Denver & A. P. Ry. Co., 248 U. S., 294.

San Antonio Pub. Service Co., 255 U. S., 547.

Southern Iowa Elec. Co. vs. Chariton, 255 U. S., 539.

Georgia Constitutional provision (Code Section 6389) forbidding making irrevocable grants of special privileges or immunities, prevents the ordinance from being a contract.

San Antonio vs. San Antonio Pub. Service Co., 255 U. S., 547.

Similarly, Georgia Constitutional provision (Code Section 6464)—"the exercise of the police power of the State shall never be abridged, nor so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals, or the general well-being of the State," prevents the ordinance from being a rate contract.

O'Keefe vs. City of New Orleans, 273 Fed. Rep., 560.

State action subsequent to November 6, 1905, made the rate provision illegal and unenforceable. Action by the State of Georgia through the Railroad Commission of the State of Georgia subsequent to November 6, 1905, renders the rate provisions discriminatory and violative of the constitutional provision of the State of Georgia (Code Section 6463) prohibiting unjust discrimination, and Code Section 6467 and 6469 makng discrimination (directly or indirectly) exercised by a Railroad Company unconstitutional and void.

Rate provision is now unenforceable under the general principles of law and under the Fourteenth Amendment of the United States Constitution; in that it, and the rates established by the State of Georgia over other portions of the same line, have the effect of establishing two different rates over the same line, charging College Park patrons a lesser fare for the greater or similar service under

the rate provision of November 6, 1905, than charged other patrons for the same or less service, under the State fixed rates.

As held by this Court in 194 U. S., 517, the enforcement of two such different rates over the same line lead to consequences dangerous to the public interest, peace and tranquillity, the extent of which it is difficult to perceive.

Discriminatory rate contracts always and everywhere void and unenforceable.

> Portland Railway & Light Co. vs. Oregon, 229 U. S., 397.

> Portland Railway & Light Co. vs. Oregon, 229 U. S., 414.

Such being the evil effect of the further performance of the rate provision of November 6, 1905, under the decisions of this Court it has either been sufficiently performed as a contract, or it has been terminated by the Railway Company by notice.

> Texas., Etc., Ry. Co. vs. Marshall, 136 U. S., 393.

It is held by the State court that the State, at any time, can terminate or confer power upon the Railroad Commission to change the rate provision in question. As such provision is not binding on the State it is unilateral and being confessedly confiscatory and discriminatory cannot be enforced against the street railway companies, and the individual intervenors.

Central Power Co. vs. City of Kearney, 274 Fed. Rep., 253 (2) and cases cited.

San Antonio vs. San Antonio Pub. Service Co., 255 U. S., 547, 558.

It has been terminated as a contract by notice, as the rate provision contained no specific time it was to continue.

Jones vs. Newport News, 65 Fed., 736.

City of Utica vs. Cons. Water Co., 179 Fed., 875.

Western Union Tel. Co. vs. Pennsylvania Co., 125 Sed., 67.

Texas & P. Ry. Co. vs. Scott, 77 Fed. Rep., 735.

If the Court holds the rate provision is not a binding valid rate contract; the federal question is made that as a rate ordinance it violates the Fourteenth Amendment of the Constitution of the United States.

TREATING RATE ORDINANCE OF NOVEMBER 6, 1905, AS A CONTRACT.

If the rate ordinance of November 6, 1905, is held to be a contract the jurisdiction of this Court is invoked to determine what obligations arose from it and whether these obligations have been impaired.

The amount of the impairment is immaterial, if there is any, it is sufficient to bring into activity the judicial power of this Court.

Farrington vs. Terry, 95 U. S., 693.

The Acts of the Legislature of Georgia (Ga. Laws

1906, page 650) extended the corporate limits of College Park towards the City of Atlanta, so as to include part of the College Park line built under a franchise granted by Fulton County. But for this annexation Act the 5 cents rate of fare of the contract of November 6, 1905, would not apply to such added portion of the line, but there would be an undisputed right resting under the franchise contract with Fulton County to charge 7 cents over this portion of the line. It is only because of this subsequent legislative act that this is prevented. That is the eyect given to this act. The judgment of the court below requiring a 5 cents rate of fare over this portion of the line rests on this act; without the Act such judgment would not and could not have been rendered. It will thus be seen that this act and the effect given it impairs the contract right held by the Street Railway Companies with Fulton County and also adds to the contract of November 6, 1905, in violation of Article 1, Section 10, of the Constitution of the United States.

Detroit United Ry. Co. vs. Michigan, 242 U. S., 238.

United States vs. eMmphis, 97 U. S., 284.

That the decision of the State court may not mention the Act in question is immaterial as the decision itself gave effect to the annexation Act.

Houston vs. Texas C. Rd. Co., vs. Texas, 177 U. S., 66, 67.

Similarly, the contract of November 6, 1905, does not require the issuing of transfers, but the order of

the Railroad Commission of April 19, 1919, requires the issuing of universal transfers for the 5 cents fare, although under the Commission's orders as to transfers all other patrons (other than the College Park patrons) pay 7 cents before they can receive a transfer. The Commission's order thus unconstitutionally impairs the obligation of the contract by adding to its burden.

> Detroit United Ry. Co. vs. Michigan, 248 U. S., 429, 436, 437.

Similarly, the Railroad Commission of Georgia by its orders extends the 5 cents fare provision to other points and in other directions than called for by the contract; also, by its orders, the quality and quantity of service is increased beyond that contemplated and required by the contract.

These different Commission's orders are attacked as violative of Article 1, Section 10, of the Constitution of the United States, as they are the same as legislative acts.

> Arkadelphia iMlling Co. vs. St. L. S. S. W. Ry. Co., 249 U. S., 134.

OTHER FED9RAL QUESTIONS RAISED.

The Acts of 1907, page 73 et seq., are construed by the State Court as conferring jurisdiction upon the Commission to issue the orders attacked. It is only because of this act, that the State Court holds the Commission had power and authority to pass the orders in question, giving such construction and effect to this Act the act is attacked as impairing the obligations of the contract in violation of Article 1,

Section 10, of the Constitution of the United States, a federal question for determination by this Court.

Detroit United Railway vs. Michigan, 242 U. S., 238.

The federal question is further raised that the Act of 1997, page 73 et seq., as construed by the State court, violates the Fourteenth Amendment of the Constitution of the United States, in that said Act denies the Railroad Commission of the State of Georgia power to change the 5 cents rate of fare in the contract, although it confers upon the Commission the power to increase the quality and quantity of service, and to require the issuing of transfers though not required by the contract; and gives the Commission jurisdiction to make the rate of fare provided for in the contract, operative from other points and in different directions from that specified in the rate contract. The act thus construed confiscates the property of the Street Railway Company.

Mississippi Railroad Commission vs. Mobile R. Co., 244 U. S., 388.

Washington & C. Ry. Co. vs. Macgruder, 198 Fed., 218 (3, 4).

Similarly each of the orders of the Commission complained of unconstitutional confiscates the property of the street railway companies. (244 U. S., 388; 198 Fed. Rep., 218 (3, 4).

If the Railroad Commission increases the rate of fare of other patrons because of their confiscatory orders as to College Park traffic, the individual intervenors are denied the equal protection of the law

and their property is confiscated in violation of the Fourteenth Amendment of the United States Constitution. The individual intervenors contend that the Act of 1907, page 73 et seq., and the orders of the eGorgia Railroad Commission unconstitutionally discriminates against them.

The federal question is raised that the Act of 1907, page 73 et seq., amended by the Act of August 18, 1919 (Georgia laws 1919, page 94), as construed by the State court is class legislation in violation of the Fourteenth Amendment of the Constitution of the United States.

It is unquestioned that the Legislature of the State of Georgia can place all rates and rate contracts under the jurisdiction of the Railroad Commission of the State of Georgia. Legislative discrimination and class legislation is produced by the Act in question by placing some contracts and withholding others (without distinction as to classification) under the jurisdiction of the Railroad Commission of the State of Georgia.

Traux vs. Corrigan, Co-Op Advance Sheets, January 16, 1922, page 132 (see pages 139-142).

Advance Sheets Supreme Court, January 16, 1922, page 124.

Lake Shore and Michigan So. Ry. Co. vs. Smith, 173 U. S., 684.

Chicago, R. I. & P. Ry. Co. vs. Ketchum, 212 Fed., 896.

L. & N. R. R. Co. vs. R. R. Com. of Tenn., 19 Fed., 693, 695.

Cotting vs. Goddard, 183 U. S., 79.

Union Sewer Pipe Co. vs. Connelly, 99 Fed., 354, affirmed in 184 U. S., 548.

Western Ry. of Ala. vs. Rd. Com. of Ala., 197 Fed. Rep., 954 (5, 6).

Gulf, Colorado & Santa Fe. Ry. Co. vs. Ellis, 165 U. S., 150, 165.

On the other hand if the rate provision of November 6, 1905, could be held to be a separate and distinct classification of rates and service; the federal question is raised that petitioners are deprived of their property in violation of the Fourteenth Amendment of the Constitution of the United States, for that such effect is given to the contract as to compel the street railway company perpetually to carry the College Park traffic at a confiscatory rate, though the contract had no specific time of duration and the electric company seeks to rescind and give up all its

rights under and by virtue of the contract and remove its lines from College Park.

Vandalia R. R. Co. vs. Schnull, 255 U. S., 131.

Brooks-Scanlon Co. vs. R. R. Com. of La., 251 U. S., 291, 399.

Detroit V. Ry. vs. People of State of Mich., 238 U. S., 340, 346.

See alos

Jones vs. Newport News & M. V. Co., 65 Fed. Rep., 736, 741.

LUTHER Z. ROSSER,
J. PRINCE WEBSTER,
WALTER T. COLQUITT,
Attorneys for Petitioners.

The foregoing notice is hereby accepted and delivery of a copy thereof and petition for certiorari and brief in support of petition, are hereby acknowledged. This June 26th, 1922.

GEORGE P. WHITMAN,
Attorney for Mayor and Council
for City of College Park.

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1921.

GEORGIA RAILWAY & POWER CO., GEORGIA RAILWAY & ELECTRIC CO., J. D. MALSBY, J. R. HARDIN, F. McDONALD, JR., C. M. BINDER, J. C. GORMAN, A. L. CURTIS, J. E. PHILLIPS, J. H. GLENN, P. L. PROVANO, H. L. GLOER, F. W. HADLEY, B. T. SIMPSON, J. L. MURPHY, D. N. BALDWIN, C. E. BENNETT, W. E. FLOWERS, H. L. WILLIS, T. F. JOHNSON, W. E. FIELD, R. L. WALKER, C. C. BARFIELD, M. W. HAWN, P. E. DAVIS and C. ROESSLER,
Petitioners,

Vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK,
Respondents.

Come now the above named petitioners, by their Counsel, and move this Honorable Court that it shall, by certiorari or other proper process, directed to the Supreme Court of the State of Georgia, require said Court to certify to this Court for its review and determination, a certain cause in said Supreme Court of Georgia lately pending, wherein the above named petitioners, were the plaintiffs in error, and and the above named respondents, were the defendants in error, and to that end they now tender herewith their petition and brief, with a certified copy

of the entire record in said Supreme Court of Georgia.

LUTHER Z. ROSSER,
J. PRINCE WEBSTER,
WALTER T. COLQUITT,
Attorneys for Petitioners.

GEORGIA RAILWAY & POWER COMPANY ET AL. *v.* MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK.

ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

No. 464. Argued April 24, 25, 1923.—Decided June 4, 1923.

1. A state statute extending the limits of a city and construed as having the effect of rendering applicable to the added territory maximum street railway rates fixed by an earlier contract between the city and the street railway company, impairs the obligation of the contract by adding to its burdens. P. 442. *Georgia Ry. & Power Co.* v. *Decatur, ante,* 432.
2. A contract of a street railway company with a city to carry passengers for a fare not greater than a stated maximum does not oblige it to issue free transfers. *Id.*
3. A contract of a street railway company with a city fixing a maximum fare for passage from that city to another city, *construed,* in accordance with the practice of the parties, as applying to passage between the cities in either direction. *Id.*

153 Ga. 329, reversed; certiorari denied.

ERROR to a decree of the Supreme Court of Georgia affirming a decree for the City of College Park in its suit to enforce compliance with a contract fixing street railway fares.

Mr. Walter T. Colquitt, with whom *Mr. L. Z. Rosser* and *Mr. J. Prince Webster* were on the briefs, for plaintiffs in error.

Mr. Geo. P. Whitman for defendants in error.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

The facts in this case and the contentions to be considered, with some exceptions presently to be stated, are essentially the same as those involved in *Georgia Ry. & Power Co.* v. *Decatur,* No. 463, just decided, *ante,* 432. From their inception in the state courts the two cases

have been considered together and in each of the three decisions referred to in the *Decatur Case* the State Supreme Court has disposed of them in a single opinion.

The contract here involved was made in 1905. It granted to the Electric Company the right to convert its single track within the limits of the municipality into a double track line of electric railway and provided: "That no greater fare than that of five cents for each passenger be charged for passage from the southern limits of said city of College Park to some central point in the City of Atlanta." The contract, however, unlike the Decatur one, contains no provision on the subject of transfers. Subsequently, by an act of the legislature, the limits of College Park were extended so as to take in a portion of the College Park line theretofore outside the municipality. Upon the authority of the *Decatur Case*, we hold that the application of the five-cent fare to the annexed territory impairs the obligation of the contract. In addition to that, the order of the commission requiring the issuance of free transfers to College Park patrons, was erroneous.

The state courts, in effect, construed the contract as obliging defendant to carry passengers in both directions between College Park and Atlanta at the stipulated rate, and with this construction we agree. It cannot be supposed to have been within the intention of the contracting parties that one rate of fare should be charged for passage in one direction and a different rate in the opposite direction, for the same distance, over the same line, under the same conditions and entailing the same service. Such a construction of the clause would subvert the plain purpose of the ordinance, which was to fix a five-cent fare between the two cities. We construe the phrase "from . . . College Park to . . . Atlanta" as though it read "between College Park and Atlanta." See *State* v. *Stone*, 20 R. I. 269. This construction, moreover,

agrees with the practice of the appellant, extending over many years in charging the same fare in each direction.

The decree of the State Supreme Court is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

Writ of certiorari denied.